



Settlement Agents NEWS

SETTLEMENT AGENTS SUPERVISORY BOARD

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Board unveils new website

After a period of industry consultation and redevelopment, the Board was pleased to launch its new website in February of this year.

The new website combines the overall format to which industry members, auditors and Western Australian consumers have become accustomed, with a contemporary design that maximises accessibility and facilitates easier navigation through its comprehensive content.



The Board encourages industry members and their clients to acquaint themselves with the broad range of information and functions that have been added to the website over the years.

The website should always be the first point of call for settlement agents with queries regarding licensing matters, general and financial compliance, and CPD requirements. There is an abundance of relevant information in the newsletter and e-Bulletin indexes, and electronic versions of all industry and consumer publications.

The primary innovation has been the inclusion of a user-friendly search function. Because there is such a wealth of information within the website, users will find this to be an invaluable means of gaining rapid access to the information they seek.

The new website retains its content devoted to auditors, links to the most current versions of settlement legislation, and helpful tools like the fee calculator and the licensee search function.

Please don't hesitate to provide feedback on the website to the Board by email on contactus@sasb.wa.gov.au.

➔ Additional Strata Titles Act documents settlement agents can prepare

Pursuant to Schedule 3 of the Settlement Agents Regulations 1982 (the Regulations), settlement agents are permitted to prepare a large number of documents to assist their clients.

As most settlement agents mainly do sale and purchase settlements they may not be familiar with the wide range of documents they are able to prepare in addition to the usual transfers, statutory declarations and applications.

The Board reminds settlement agents that while they may be permitted to prepare these additional forms, they should only accept instructions regarding these documents if they possess the relevant expertise and knowledge to prepare them correctly.

While this article covers the additional forms that real estate settlement agents can prepare pursuant to the *Strata Titles Act 1985* (the STA), it does not cover all of the documents settlement agents can prepare. Agents are referred to Schedule 3 of the Regulations for a complete list. In future editions of the *Settlement Agents News* further information will be provided on other documents agents can prepare.

Settlement agents are reminded that these forms by themselves have no effect. They will be a part of the documents required to carry out the decisions and agreements made by the strata company. It is recommended that agents obtain copies of and refer to the STA and the Strata Titles General Regulations 1996 in addition to the *Landgate Practice Manuals* when dealing with any STA forms.

Schedule 3 Part C clause 1(a) of the Regulations refers to the documents for registration or lodgement pursuant to the STA:

- Application for registration of a strata plan or survey-strata plan. Most settlement agents will be familiar with this form.
- Notice to a buyer of notifiable variation pursuant to Section 69C of the STA. This notice is required if the information disclosed to the buyer in the contract is varied. Such variations can include but are not limited to a change in the size of the lot, increase in the levies, the developer deciding to amend the standard bylaws or making an amendment to bylaws or management statement already disclosed.

Schedule 2 of the Strata Titles General Regulations 1996 lists a number of forms that are required for various purposes under the STA. Some but not all of these forms are included in Schedule 3 Part C clause 1(b) of the Regulations and as such agents are reminded that when accepting instructions to prepare any strata forms they should check the Regulations carefully to ensure they are able to prepare the documents required.

- Form 10 – Conversion of a lot into common property.
- Form 11 – Consent by the strata company to the amendment of the unit entitlement schedule.

- Form 12 – Certificate of strata company authorising an application to be made to the State Administrative Tribunal for an amendment of unit entitlement.
- Form 13 – Certificate of the strata company to the acceptance of a transfer or lease to create additional common property.
- Form 14 – Certificate of the strata company agreeing to the transfer or lease of common property. This form can also be used for the grant of an easement or restrictive covenant over common property.
- Form 15 – Notification for the termination of a scheme. This form has the effect of ‘cancelling’ the existing strata plan. Usually used when the ownership of all lots in the strata plan are in the same entity and the owner wishes to revert back to a green title and/or redevelop the site. In developments where there is more than one owner they may choose to terminate the scheme to allow the rebuilding of all units and the creation of a new strata scheme.
- Form 16 – Notice to Landgate to amend the address for service of notices. On every strata plan there is a requirement for an address to be shown for service of notices on the strata company; in most cases is it the street address of the scheme.

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The owners/strata company can make a decision to change this so notices are issued to the Strata Manager or to a post office box address.

- Form 17 – Notice of change of name of scheme and change of address for notices. The owners/strata company may wish to change the name of the scheme. If, for instance, the name of a scheme is 219 St Georges Terrace but the building is colloquially known as Commerce Apartments, they may wish to have this recorded on the strata plan.
- Settlement agents cannot prepare a Form 18 which is a Certificate of the Local Government.
- Form 19 – Notice to vary, remove or add a restriction. Various restrictions can be placed on the use of a strata lot (for example, age restrictions, must only be used as a Doctors Surgery etc). This form allows these restrictions to be varied, removed or added to.
- Form 20 – Application for a re-subdivision of the strata plan. Used when an existing strata plan has been changed due to the addition of another building on a lot, for instance.
- Form 21 – Notification of change of bylaws. This form enables the strata company to delete, amend or add to the existing Schedule 1 and 2 bylaws.
- Form 22 – Disposition on subdivision. Used to allocate certain lots within the scheme to certain owners, allocate encumbrances to certain lots and detail if any consideration was exchanged between the various owners.
- Form 23 – Disposition on re-subdivision. Similar use to Form 22.
- Form 24 – Application to WAPC for approval to strata plan. Essentially a cover sheet to be used when lodging the strata plan with the WAPC.
- Settlement agents cannot prepare:
 - Form 25 – Management statement
 - Form 26 – Grant of approval by WAPC
 - Form 27 – Certificate of licensed valuer
- Form 28 – Strata disclosure statement. All settlement agents should be very familiar with this form.
- Settlement agents cannot prepare Form 29. This is a form prescribed by legislation which cannot be changed and which forms part of the strata disclosure statement (Form 28).
- Form 30 – Notice of resolution of merger of buildings. Used to extend the boundary of the lot from the internal surfaces to the external surfaces.
- Settlement agents cannot prepare:
 - Form 31 – Notice of objection to automatic merger of buildings
 - Form 32 – Notice of resolution of merger of land
 - Form 33 – Notice of resolution of merger of buildings and land
 - Form 34 – deleted
 - Form 35 – Certificate of licensed surveyor
 - Form 36 – Certificate of licensed valuer
 - Form 37 – Notice of resolution of conversion to a survey-strata scheme
- Form 38 – Certificate of licensed surveyor
- Form 39 – Disposition on merger of land or conversion to a survey-strata scheme. (Author's comment – Please note that while a settlement agent can prepare this form they are unable to prepare Forms 32 and 37 which also relate to merger of land or conversion to a survey strata scheme.)
- Form 40 – Notice of objection to change of fencing provisions. (Author's comment: this form appears to only be of use during the transitional provisions of the *Strata Titles Amendment Act* so may now be obsolete.)
- Form 41 – Notice of termination of insurance order. Pursuant to section 103J of the STA, an application can be made to the State Administrative Tribunal (SAT) to exempt the strata company from the obligation to insure as required by sections 54 and 55(1) of the STA. Form 41 has the effect of terminating the order of the SAT.

Provided you are certain of your ability to prepare these additional forms, the Board hopes settlement agents find this list useful in value-adding to your businesses by expanding the services you can offer to your clients beyond the scope of everyday property settlements.

Development Control Areas of the Swan River now available through Landgate's *Interest Enquiry*

Landgate has recently released, through *Interest Enquiry*, information relating to areas of the Swan River under the care and control of the Swan River Trust.

In the *Settlement Agents News* Issue 49 (Summer 2009) the Board advised of Landgate's *Interest Dictionary* and *Interest Enquiry* facility, available to settlement agents from the *My Landgate* website, accessible through www.landgate.wa.gov.au.

The *Interest Dictionary* can be used

to gain a greater understanding of **Development Control Areas** under management of the Swan River Trust, their impact on planning approvals and things to consider when dealing with affected land.

An Interest Report can be ordered from *Interest Enquiry* to confirm whether or not an area falls wholly

or partially within a **Development Control Area** and therefore whether there is the potential for additional planning approvals to be required.

The following table is a full list of Interest Reports currently available for online assessment in *Interest Enquiry*.

Interest report name	Custodian of the interest	Price
Aboriginal Communities	Department of Indigenous Affairs	\$0.00 *
Aboriginal Heritage	Department of Indigenous Affairs	\$0.00 *
Acid Sulfate Soil Risk	Department of Environment and Conservation	\$0.00 *
Bush Forever Areas	Department of Planning	\$0.00 *
Control of Access on State Roads	Main Roads WA	\$0.00 *
Development Control Areas	Swan River Trust	\$0.00 *
Emergency Services Levy	Fire and Emergency Services Authority of WA (FESA)	\$0.00 *
Heritage Places (State Register Only)	Heritage Council of WA	\$0.00 *
Mining Titles	Department of Mines and Petroleum	\$0.00 *
Native Title Spatial Report	National Natives Title Tribunal	\$34.21
Petroleum Tenure	Department of Mines and Petroleum	\$0.00 *
Region Planning Schemes (Metro and Peel)	Department of Environment and Conservation	\$0.00 *

* A Landgate Service Fee of \$5.50 (incl GST) per order or 7.5 per cent of the order's total cost (whichever is the greater) will be applied to orders placed within Interest Enquiry.

Further information

If you have questions surrounding the interests and their impacts please contact the custodian of the interest directly. For questions about the *Interest Enquiry* facility or product delivery contact Landgate on onlinesupport@landgate.wa.gov.au or phone 9273 7341.

If you cannot find an interest to fit your situation please 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.

Dealing with interest bearing trust accounts

Settlement agents need to be aware of issues surrounding interest bearing trust accounts.

Agents are required to open separate interest bearing trust accounts for a client if a written request is received from that individual for an amount of money in excess of \$20,000, or for money needed for a transaction that will not be settled within 60 days.

Under regulation 6B(3) of the Settlement Agents Regulations 1982, the title of an individual interest bearing trust account should include the words 'SA Trust Account – IB'. The 'IB' component of the designation denotes that the account is interest bearing.

Furthermore, when opening an interest bearing account, the client's tax file number should be quoted to avoid tax being withheld at the top marginal rate.

Interest paid on the account is to be credited to the individual who requested the creation of the account.

Importantly, the monthly trust account reconciliations should include periodic adjustments for interest accruing on interest bearing trust accounts.

Interest bearing trust accounts need to be correctly recorded on the trial balance. As and when interest is credited to the interest bearing trust account, it needs to be recorded by the settlement agent in terms of adjusting the balances for trust moneys held (in this case, external to the general trust account of the agency).

The Board reminds agents that disputed funds retained after settlement can only be kept in the general trust account and not in an interest bearing trust account.

For more information please refer to the Board publications *SASB Trust account handbook* and *A guide to auditing settlement agents' trust accounts*, available on the website through the 'For Agents' tab at www.sasb.wa.gov.au.

For hard copies of the above booklets or to seek clarification on your trust accounting requirements, 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.

Implications for the settlement industry with future National Licensing System legislation

On 2 December 2009, the Board in conjunction with the Department of Commerce held a discussion forum for settlement agents following the release in November of the draft National Occupational Licensing Law Bill 2009.

The National Licensing System is a Council of Australian Governments (COAG) initiative that will apply to a number of occupational groups. Settlement agents (conveyancers) are included in the group known as 'Property Agents' and will be subject to the new system from 1 July 2013.

The draft bill was subject to a consultation process that ended on **28 December 2009**.

The draft regulations, which are expected to be released by early 2011 in the form of a Regulatory Impact Statement (RIS), must undergo a cost benefit analysis before being endorsed by COAG and the Commonwealth Government.

Accordingly, the focus of the legislative reform process will eventually shift from the higher level governance issues covered in the draft Act and onto the detail of the operational matters being prescribed within the draft regulations.

The Board and the Department are committed to keeping settlement agents and peak industry bodies apprised of the ongoing progress of the COAG National Licensing System.

Presently, an online version of the draft bill and further information can be found on the website www.govdex.gov.au.

Compulsory Professional Development requirements for 2010

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

For 2010 the Board has prescribed the following **core** training subjects:

- Joint Form of General Conditions
- Risk management — professional indemnity insurance claims
- Law of contract
- Settlement of commercial property

For 2010 the Board has prescribed the following **elective** training subjects:

- Disciplinary proceedings
- Conflicts of interest and disclosures
- Reconciliation of trust accounts

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

The Board has also reviewed its contract with West Coast Property Training (WCPT) for the delivery of the above prescribed CPD activities and decided to extend its contract with WCPT for 2010.

However, this year other training providers will be allowed to apply to the Board to deliver elective CPD activities (aside from the above prescribed subjects) which may 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.

Compulsory Professional Development dates for your diary

Date	Time	Session	Point Value and Type	Location
Tue, 16 Mar	09.30–11.30	Disciplinary proceedings	2 Elective points	CBD
Tue, 16 Mar	12.15–14.15	Topics to be advised	2 Core points	CBD
Tue, 16 Mar	14.45–16.45	Topics to be advised	2 Core points	CBD
Wed, 7 Apr	09.30–11.30	Topics to be advised	2 Core points	Fremantle
Wed, 7 Apr	12.15–14.15	Conflicts of Interest and Disclosures	2 Elective points	Fremantle
Wed, 7 Apr	14.45–16.45	Topics to be advised	2 Core points	Fremantle

The easiest way to arrange CPD bookings is to book online at www.wcpt.com.au. If you have any direct booking enquiries, please contact West Coast Property Training by email on cpd@wcpt.com.au or phone 9300 0000.

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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