Real Estate Agency and Sales Practice

Good Business Guide
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Note
All forms required by the *Property Agents and Motor Dealers Act 2000* and *Property Agents and Motor Dealers Regulation 2001* are regularly reviewed and updated. When a major change is made to a form, it is renamed with a new letter of the alphabet eg the Warning Statement PAMD Form 30c will become Warning Statement PAMD Form 30d. Very minor changes are renamed ‘version 2’ etc.

It is your responsibility to ensure you have the correct version of a particular form. While the Office of Fair Trading will publicise new versions of forms, please regularly visit the Office of Fair Trading website [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or the website of your industry body to keep up-to-date.

This guide provides guidance to licensees, agents or salepersons and so all references to agent should be interpreted to include salespersons except where clearly indicated otherwise.

OFT Disclaimer
This publication is a simplified guide to Queensland’s *Property Agents and Motor Dealers Act 2000* and *Property Agents and Motor Dealers Regulation 2001* and aims to provide a general understanding of obligations.

This Guide is not a comprehensive statement of the law. The laws referred to are complex and various qualifications may apply to the provisions in different circumstances.

You are encouraged to obtain independent legal advice if you are unsure how the laws apply to your situation.
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Introduction

The Property Agents and Motor Dealers Act 2000 (the Act) evolved over a period of 10 years with significant consultation with industry and consumers. The aim of this Act is to promote a fair and competitive marketplace by providing:

- a comprehensive licensing system, which sets minimum entry standards;
- establishes standards for industry practice; and
- safeguards for consumers.

The Act places great emphasis on the use of approved forms to ensure consistency in the way information is provided to the client.

Purpose of the PAMD Act

The Property Agents and Motor Dealers Act 2000 brought better consumer protection and increased fair trading within the real estate industry, it also changed the way real estate professionals do business. It modernised laws that apply to business practice involving:

- real estate agents and salespeople;
- property developers;
- marketeers;
- restricted letting agents;
- auctioneers;
- pastoral houses;
- motor dealers and salespeople; and
- commercial agents.

Since July 2001, the legislation made major changes to the way the industry operated. A summary of these changes is listed below:

- greater agent obligation to make full disclosure to consumers;
- Warning Statements advising buyers to get seek valuations and legal advice;
• maximum limit of 60 days for all controlled sales listings;
• 5 day cooling-off period for sales (except by auction) of all residential property;
• enhanced prohibitions against making false or misleading representations;
• greater accountability for the registration of real estate salespeople working for licensees;
• provision for developers to be licensed and to provide certain disclosures to consumers;
• the introduction of a mandatory Code of Conduct;
• the establishment of a Claim Fund for consumers; and
• the introduction of mandatory complaints resolution procedures.

The legislation also introduced standardised documents for all transactions, eradicating the wide use of unauthorised and potentially misleading forms drafted over the years by agents. All property listings, regardless of whether they are for sale or rental management, are now signed on the same paperwork.

This guide should be read thoroughly in conjunction with the Act and then retained as a reference. It is also important your employees read this material, as many requirements will impact directly on their activities. Failure to comply with the legislation will result in serious penalties.
The Queensland Government is committed to achieving a proper balance between protection for consumers and competitive business practices in the real estate industry.

**Consumer Protection**

The real estate industry has traditionally served the interests of the client in a property transaction. In most residential transactions, this has been the property owner. This relationship between the agent and the client is founded in common law, where the agent has a duty of care and utmost good faith to his or her client. However, modern society requires an agent to exercise similar responsibilities when also dealing with customers, who are traditionally tenants and buyers.

The Act reflects modern consumer law and requires an agent to act professionally and treat all clients and customers in a transaction fairly and with a high degree of accountability and skill.

Some of the major changes affecting the real estate industry included:

- a greater obligation to make full disclosure to consumers. This will include obligatory disclosures when:
  - listing a property for sale or for rent;
  - entering into a controlled agency arrangement on a property for sale or for rent;
  - Warning Statements to be attached to all residential sales contracts; and
  - a maximum time limit of 60 days for all controlled sales listings;
• a 5 day cooling-off period for sales of all residential property (except by auction);
• enhanced prohibitions against making false or misleading representations about property;
• greater accountability for the registration of real estate salespeople working for licensees;
• provision for developers to be licensed and to provide certain disclosures to consumers;
• a mandatory Code of Conduct;
• the establishment of a Claim Fund for consumers; and
• mandatory complaints resolution procedures.

Each of these provisions required changes to the way real estate businesses operated. In particular, these changes should result in a better level of service and consumer protection for all parties involved in a real estate transaction.

**Licensing Requirements**

The Act is administered by the Office of Fair Trading, Department of Tourism, Fair Trading and Wine Industry Development.

The Office receives and makes decisions on applications for both licensing and registration of agents and their employees. It also maintains a register of all licensed agents and their employees. This register is available to members of the public for inspection for a fee.
Licensing Categories

There are 10 licensing and registration categories relating to the real property industry:

- Real Estate Agent;
- Real Estate Salesperson;
- Auctioneer;
- Property Developer;
- Property Developer Director;
- Restricted Letting Agent;
- Pastoral House;
- Pastoral House Director;
- Pastoral House Manager; and
- Pastoral House Auctioneer.

Licences can be limited by conditions, for example a real estate agent licenced to manage shopping centres only.

Restricted Letting Agent is a separate category of licence to let property and collect rent in multi-dwelling complexes. For more information see the Restricted Letting Agents Good Business Guide.

Property Developers should also seek more information from the Property Development Sales Practice Good Business Guide.

Term of Licence

Licensees have the option of applying for a licence with a term of 1 or 3 years. This offers many advantages to a licensee, as lodging annual applications can be time consuming.

Government Authorities

Certain State Government Authorities have been brought under the provisions of the Property Agents and Motor Dealers Act 2000. This will impact particularly on the activities of:

- The Public Trustee;
• The Chief Executive of relevant government departments;
• The Queensland Housing Commission (The Department of Housing); and
• QBuild (The Department of Public Works).

These institutions are now required to be licensed.

Suitability for Licence
Section 26 of the Act deals with suitability for licensing. All applicants must be “a suitable person to hold a licence” and meet certain individual requirements:

• they must not be affected by bankruptcy action;
• they must be 18 years of age or older;
• they cannot have a conviction for a serious offence within 5 years of making the application; and
• they are not currently disqualified from holding any form of licence or registration certificate under the Act.

Eligibility for Licence
Educational and other qualifications for licences for real estate agents, and auctioneers are in Schedule 2 of the Property Agents and Motor Dealers Regulation 2001. For these licence categories, applicants must complete specified modules from the national real estate curriculum approved under the Australian National Training Authority Act 1992 (Cwlth). These must be completed at, or competency assessed by, a registered training organisation.
Applicants can check the NTIS website at [www.ntis.gov.au](http://www.ntis.gov.au) to find out which training organisations offer these modules.

### Real Estate Agent’s Licence

To obtain a real estate agents licence, applicants are required to meet certain educational and competency standards. Until the end of 2005, applicants have a choice of completing either of two qualifications.

These are currently contained in the second schedule of the *Property Agents and Motor Dealers Regulation 2001*, i.e., Certificate IV in Real Estate Agency Practice (as per the Australian National Training Authority) or 17 competency units taken from the Property Development and Management Training Package (PRD01).

From 1 January 2006, the only qualification that will be available will be the PRD01 competency units.

**Note:** Reliance on experience qualifications alone will no longer apply from 19 December 2005.

### Limited Real Estate Agent’s Licence

This is a licence issued as a sub-category of the real estate agent’s licence, and applies to Shopping Centre Managers. The prescribed educational qualification for a limited real estate agent’s licence is set out in the second schedule of the *Property Agents and Motor Dealers Regulation 2001*. Until 18 December 2005, applicants may obtain a licence by either:

- the successful completion of nine modules from the National Real Estate Curriculum or Part 1 of the Graduate Certificate in Shopping Centre Management plus a real estate accounting subject accreditation in the Curriculum, or;
the completion of the four competency units listed in the Property Development and Management Training Package (PRD01).

A limited real estate agent’s licence authorises the holder to let businesses, collect rents and to negotiate for the letting of businesses or interests in businesses in a nominated retail shopping complex.

**Restricted Letting Agent’s Licence**

The requirements now include an educational qualification for those wishing to gain a Restricted Licence for the purpose of Resident Unit Management. These qualifications are set out in the second schedule of the *Property Agents and Motor Dealers Regulation 2001*, either 6 modules from the National Real Estate Curriculum until 18 December 2005 or competency units listed in the Property Development and Management Training Package (PRD01).

A Restricted Letting Agent’s licence is restricted to finding tenants, rent collection and property management on behalf of the unit owner within a nominated residential complex only.

**Auctioneer’s Licence**

For an auctioneer to sell real estate, the regulations prescribe

- an educational qualification comprising either four subject modules from the National Real Estate Agents Curriculum or
• completion of six competency units listed in the second schedule of the Property Agents and Motor Dealers Regulation 2001 and the completion of five auctions under the supervision of an auctioneer.

However, from 19 December 2005, the only education qualifications which will apply are the Property Development and Management Training Package (PRD01) units and the completion of 5 auctions under supervision.

Evidence of Qualifications
An applicant for any of the above licence categories must provide a copy of a certificate of attainment from a registered training organisation (RTO) as evidence of their educational qualifications. Licence applicants must also be able to satisfy the Chief Executive (OFT) that they are a suitable person and at least 18 years of age.

Lending or Hiring out Licences
A licensee is not permitted to sell, lend, hire out or transfer their licence to another person, regardless of that person’s suitability to hold a licence. It is also an offence to advertise a licence for sale, hire, loan or transfer.

This situation most commonly occurs when a real estate business is sold and the outgoing licensee agrees to permit the new proprietor use of their licence until a new licence is issued. This practice is illegal and fraught with serious consequences for all parties involved.

If a person is found to be in charge of a licensee’s business and they are not suitably licensed, it will be considered a breach of this provision. The Act defines “in charge” as being involved with personally supervising, managing or controlling the conduct of the licensee’s business on the business premises.
**Note:** New proprietors of real estate agencies should apply for all appropriate licences early in the sales process to avoid delays in starting business.

**Substitute Licensees**

Every real estate office must have a licensed person in charge. In the event that a licensee is not able to supervise an agency, the licensee must appoint a suitably qualified licensee as a substitute.

The Office of Fair Trading recommends the substitute appointed be a licensed real estate agent, however, if this is not possible the principal licensee can appoint a suitable substitute to run their business for a maximum of 30 days. If the appointment is to be more than 30 days, the licensee must apply to the Chief Executive (OFT) on the approved form for approval of the licensee’s substitute. This approval must also be kept at the real estate agency and made available for inspection if requested.

The person appointed as a substitute must meet standards of suitability. The appointment must be made in writing and signed by both the licensee and the appointed substitute.

When a licensee appoints a substitute, they accept the responsibility that the substitute has the skills to carry out the tasks required. The licensee will be held responsible for any breaches the substitute commits during the substitution.
Independent Contractor Requirements
Licensees must ensure contractors engaged under independent contract arrangement hold a real estate agent’s licence – failure to do so could result in prosecution or disciplinary proceedings.

Salespersons employed under an employment contract must hold a salesperson’s certificate of registration.

Registration of Employees
Employees who perform real estate agency activities on behalf of licensees must be registered with the Office of Fair Trading. These same requirements apply to employees of licensed property developers and auctioneers.

A corporation cannot act as a registered employee of a real estate agent.

Registered persons should include any employee who performs the following activities on behalf of a licensee:

• transacts or negotiates the sale or rental of property;
• shows property;
• appraises property for sale or for rent;
• inspects property for sale or for rent; and
• advertises, places a sign or conducts an open for inspection on a property for sale or for rent.

An employee does not have to be registered if he or she is currently licensed. Employees who perform clerical duties such as receptionist or receipting and banking rent need not be registered.

Eligibility for Registration
For each category of registration, there are prescribed educational qualifications as set out
in the second schedule of the *Property Agents and Motor Dealers Regulation 2001*. Applicants for real estate salespersons registration must complete either the modules from the National Real Estate Curriculum or the four competency units of the Property Development and Management Training Package (PRD01). From 19 December 2005 only the PRD01 will be recognised. These must be completed at, or competency assessed by a registered training organisation.

**Trainee Auctioneer Registration**

Eligibility will involve either the completion of three modules required under the National Real Estate Curriculum or the completion of two competency units taken from the Property Development and Management Training Package (PRD01). However, from 19 December 2005 only the PRD01 competency units will be recognised.

**Proof of Licence/Registration**

Section 163 of the Act requires an agent/salesperson to provide proof of registration/licence to consumers. This constitutes a certificate clearly displayed at the place of business.

The licensee’s name should be displayed in lettering at least 1.5cm in height at each place of business.

The Office of Fair Trading advises consumers to deal only with licensed dealers and registered salespersons, and to sight the licence or registration certificate in the workplace.
Prohibited Practices

The Act is specific in its stipulation that only a licensed person or an employee of a licensed person can make representations to the public regarding properties for sale or for rent. Furthermore, only a licensed person can be paid a fee or commission for letting or selling real estate.

Independent Contractors

Note: Licensees who engage contractors who do not hold a full real estate agent’s licence under independent contacting agreements are likely to be in breach of the Property and Motor Dealers Act 2000 licensing requirements.

The Commercial and Consumer Tribunal

The Commercial and Consumer Tribunal replaced and is an amalgamation of the Property Agents and Motor Dealers Tribunal, Queensland Building Tribunal, Retirement Villages Tribunal and Liquor Appeals Tribunal. Under section 450 of the Act the Tribunal has power to:

- deal with unlicensed as well as licensed operators;
- hear disciplinary charges against licensees and employees;
- undertake public examinations;
- order people to stop conduct that may be in breach of the Act;
- order monetary penalties of up to $15,000 for individuals and $75,000 for corporations;
- impose conditions on, suspend or cancel licences and prevent people from holding licences in the future;
- decide claims valued over $5,000 against the Claim Fund; and
• review the Office of Fair Trading’s decisions relating to registration and licensing issues and minor claims.

Tribunal members must be either a lawyer with at least five years’ experience or someone with substantial knowledge of an area of tribunal jurisdiction. The Tribunal has a registry responsible for administrative matters relating to the business of the Tribunal.

**Dispute Resolution**

Under section 154 of the *Property Agents and Motor Dealers Act 2000* real estate agents are required to provide a complaint handling process. All complaints received by the Office of Fair Trading will be investigated. However, consumers are encouraged to resolve the issue with the agent in the first instance in line with Clause 43 of the *Property Agents and Motor Dealers Regulation 2001 – Code of Conduct*.

For reasons of consistency, principles for complaint handling should be developed and structured in a way so that individuals are confident that their complaint is handled fairly. For example, ensure that individuals are informed that the complaint handling process exists, is easy to use, who to contact and that it will not cost them.

To ensure efficiency and accountability, complaints should be handled in a timely manner with transparency offered regarding the decision making process.
Note: Industry associations such as the Real Estate Institute of Queensland and the Queensland Resident Accommodation Managers Association (QRAMA) require members to undertake specific reporting of complaints as part of their member code of conduct.

If the complaint cannot be resolved to their satisfaction, the individual then has the option to make a complaint to either the Office of Fair Trading or the Residential Tenancy Authority depending on the nature of the problem.

The Department of Justice and Attorney-General has an Alternative Dispute Resolution (ADR) service.

For more information refer to the Code of Conduct section on page 101 of this guide.

Claim Fund for Consumers
The Property Agents and Motor Dealers Act 2000 Claim Fund may compensate consumers who have suffered a financial loss because of the actions of licensees or their registered employees.

When a successful claim has been made pursuant to section 470 of the Property Agents and Motor Dealers Act 2000, the agent responsible for the loss will be liable to repay the amount of the claim to the Claim Fund and may also be subject to disciplinary action before the Commercial and Consumer Tribunal.

Minor Claims
Claims up to $5,000 are called minor claims and the Office of Fair Trading will determine these claims. The Commercial and Consumer Tribunal will decide claims valued over $5,000 and can also review the Office of Fair Trading’s decision on claims under $5,000.
Note: Claims cannot be made against the Claim Fund if the individual has suffered a financial loss through dealings with a property developer or the property developer’s employees. Likewise, claims for financial loss arising from an agent’s failure to give appropriate disclosure relating to benefits received from referrals are not eligible.

Appointment to Act

The Property Agents and Motor Dealers Act 2000 requires strict statutory procedures when:

- listing property for sale or for rent;
- entering into a controlled agency arrangement; and
- supervising the signing of a sales contract by buyers.

Listing Properties for Sale and Rent

The Act requires all agents to observe basic statutory procedures when listing. The most significant changes are:

- all appointments are to be made on the Government approved document known as the Appointment to Act as a Real Estate Agent;
- all appointments must be in writing and contain all the information as specified in the government approved forms;
- a requirement to make certain disclosures to sellers when entering into an Appointment to Act, including the disclosure of any
rebates, business referrals and any perceived conflict of interest. There is also a greater emphasis on making the client aware of the legal implications of entering into a sole or exclusive agency sales agreement;

• the requirement to nominate whether an appointment is to be a continuing or single appointment;
• a time limit of up to 60 days for controlled sales listings;
• the requirement for all property management listings to have a termination date; and
• clients (property owners selling or leasing through an agent) must be given a signed copy of PAMD Form 20a – Appointment of Agent – Letting and Property Management or PAMD Form 22a – Appointment of Real Estate Agent (Sales and Purchases).

The Appointment to Act

All appointments must be in writing and contain all the information specified. If your documentation does not comply, as well as being a breach of the legislation this may affect your entitlement to commission.

This Appointment to Act as a Real Estate Agent, will apply when:

• listing all property for sale;
• listing property for rent or for lease;
• entering into a management agreement for rental properties/project sales management/shopping centre management/resident unit management;
• entering into an agreement to collect rents;
• listing businesses for sale or for lease;
• purchasing properties on behalf of a client; and
• leasing properties on behalf of a client.
There are now separate approved forms for Appointment to Act in relation to letting, leasing or property management and the sale of any property or business.

There is also a new PAMD Form 21a – Appointment of Real Estate Agent (Commercial and Industrial Sales, Leasing and Property Management) which can be used for appointments between real estate agents and clients for the sale or purchase, leasing or property management of non-residential property.

**Single or Continuing Appointment**

The Appointment to Act form requires an agent to nominate the type of appointment. There are two options:

- a single appointment, which is for a particular “one-off” service; or
- a continuing appointment, which will be an “on-going” appointment involving the delivery of a number of services over a period of time.

**Single Appointment**

A single appointment would be considered an appointment that has a certain performance criteria, for instance, being appointed to sell a property on behalf of a client. The appointment can be open-ended as in the case of an open listing, or contain a termination date, which would apply in the case of a controlled listing. The maximum time for a controlled listing is 60 days.
Continuing Appointment

A continuing appointment would involve an on-going commitment by the agent and client to have a business relationship until either party wishes to end the arrangement. This appointment would apply to a property management agreement, which specifies a number of services and performance criteria must be delivered by the agent on an on-going basis. A continuing appointment must also have provision for a termination date and can be revoked by either party giving notice.

Appointments that would be considered a continuing appointment include:

- Rental Property Management;
- Resident Unit Management;
- Project Marketing; and
- Shopping Centre Management.

If the Appointment to Act does not specify the nature of the property or type of transaction it may not be valid or enforceable.

Period of Single Appointment

All single appointments that are a controlled listing (with the exception of non-residential sales) cannot exceed 60 days. A controlled listing is any listing where only one agent has been authorised to act on behalf of the client to sell a property. A controlled listing may be a:

- multi-list;
- sole agency;
- exclusive agency;
- auction;
- tender; or
- exclusive marketing/co-ordinating agency agreement.
In other words, a controlled listing is any agency appointment other than an open or general appointment to act.

The commencement of the term is taken from the time of appointment to midnight on the date of expiry. For example, if an appointment was dated 10 June, and expired on 8 August, it would be effective for 10 June through to midnight on 8 August.

**Note:** An agent must calculate the 60 day period (or other agreed period of time) in calendar days.

**Renewal of Single Appointment**

In the case of a controlled listing, a single appointment may be renewed within 14 days before the date of expiry. A reappointment also has a maximum period of 60 days. This period commences from the expiry date of the previous appointment. There are practice implications here for agents, as all controlled listings due for renewal will need to be closely monitored so no errors in timing occur. If an agent is appointed to sell three or more lots for the one owner, then the 60 day limitation on the appointment will not apply.

**Limitations of Appointment**

There is provision in the listing appointment for special arrangements (conditions/restrictions or limitations) to be negotiated between the agent and the client.

Although the Act does not specifically identify circumstances that may apply
to this section, Section 135(2) states at the end of the controlled listing period, the appointment may include provision for the listing to continue as an open listing. The agent or the client can end an open listing at any time.

The Appointment to Act provides for the agent to nominate whether the listing is to continue as an open listing upon termination of the appointment or whether the appointment will be terminated at that time. Other matters that may be listed under the conditions/limitations section would include:

- provision to conjunct the listing;
- a specific condition of performance eg if the property has not sold by a certain date it shall be withdrawn from sale and rented; and
- whether the property is not to be promoted until vacated etc.

Although there is no requirement in this section of the Appointment to Act for the client’s/agent’s initials, it would be sound business practice to have any special conditions initialled by all parties to the agreement.

**Consumer Protection – Sole and Exclusive Agencies**

The Appointment to Act provides specific warnings to a client about entering into a controlled listing arrangement. In particular, it warns the client about his/her liability to pay commission/professional fees in the event of completing a transaction privately or through an agent other than the appointed agent.

An agent should be aware of the difference between a sole agency and an exclusive agency. In both situations the client may sell/purchase the property privately, however in the case of an exclusive agency, the client is required to pay to the agent the agreed commission or fees.
Terminating a Single Appointment – Open Listing

The client or the agent may terminate a single appointment that is not a controlled listing at any time. Termination must be by written notice.

Terminating a Single Appointment – Controlled Listing

A single appointment that is a controlled listing may be terminated by mutual agreement or expire at the end of the term of listing. The maximum listing period is 60 days. The owner still reserves the right to withdraw the property from sale within the period of appointment.

Terminating a Continuing Agency

In the past continuing agreements, particularly property management agreements, have been open-ended.

Since 1 July 2001, agents entering into new agreements are required to indicate a termination date.

While the legislation does not specify how long these agreements can be in force, consumer law indicates the time frame to be fair and reasonable for all parties to the transaction.

The real estate industry needs to investigate appropriate terms that are acceptable to their fields of specialisation. It is anticipated management agreements will require a higher level of negotiation than previously experienced and there will be a greater emphasis on performance criteria incorporated into a continuing agency.
GST implications should also be taken into consideration before reviewing any existing management agreements.

**Notice to Terminate**

If either party wishes to terminate a continuing agency prior to its date of completion, the notice to terminate must be in writing and provide a period of 90 days to terminate. This notice period can be shortened to less than 90 days by mutual agreement. However, the period of notice cannot be less than 30 days.

If the continuing agency provides no date for completion, then a maximum 90-day notification period is required unless otherwise determined by mutual agreement. Once again, the notification period cannot be less than 30 days.

In the event of termination of the agent’s authority under a continuing agreement, other agreements and contracts arranged or entered into by the agent on behalf of the client prior to termination will not be affected.

**Disclosures**

Practising agents should be aware of statutory disclosures that must be made to a client before entering into a new appointment to act.

The *Property Agents and Motor Dealers Act 2000* provides for disclosures to be made on approved forms.

The agent is required to discuss with the client the listing options available to them and outline the difference between the sole and exclusive agency before the listing is entered into. Information about sole and exclusive agency is included in *PAMD Form 22a – Appointment of Real Estate Agent (Sales and Purchases).*
The Agent’s Right to Remuneration and Recovery of Monies

Section 140 of the Act states an agent may only recover a commission or any other financial reward or benefit if they are:

- licensed;
- the licence authorises them to perform that particular activity; and
- they have been appointed in writing on the approved Appointment to Act by a person authorised to rent or sell the property.

Licensed Agents

The Act is clear in its stipulation only a principal licensee can receive income from a real estate transaction.

People who are not licensed real estate agents cannot receive income directly related to a transaction. For instance, an unlicensed person cannot seek a conjunction or a referral fee from a transaction. Nor can a salesperson working for a principal licensee receive income directly from a transaction.

Agents must be especially alert to this situation. For instance, it is an offence to involve an unlicensed party such as a friend, an accountant, solicitor, business migration broker or executive relocation companies directly in a real estate transaction where they will be performing the tasks of an agent (such as showing properties on your behalf).
These parties must be licensed or employed by a licensed agent to be entitled to fees or commissions from a transaction. An unlicensed person acting as an agent is aiding and abetting a breach of legislation and will be prosecuted.

**Scope of Licensed Activities**

An agent can only be remunerated for activities they are permitted to perform under a particular licence. For instance, a person who holds a restricted letting licence cannot claim commission for the sale of a home unit under their management. Nor can they claim a conjunctional commission by sharing the sale with a licensed sales agent, as they are not authorised under that licence to sell.

Likewise a licensed developer cannot act on behalf of other property owners. This impacts particularly on resales and rentals in their own projects or estates. Under these circumstances they would be required to be a licensed real estate agent.

**Commissions**

The Appointment to Act provides for the agent to be paid commission by the client. The commission payable is subject to GST where applicable.

It also notifies the client in the case of residential sales, there is a maximum scale of commission and it is negotiable. The calculation of commission must be expressed both as a percentage and as an estimated dollar amount based on the listed/reserved purchase price or agreed rental charge.

Please note the terms “standard rate of commission” and “standard REIQ commission” cannot be used. The rates of commission are prescribed in the *Property Agents and Motor*
Dealers Regulation 2001. Although residential commission rates are capped, the commission rate is negotiable up to that limit. Commercial commission rates are not prescribed or capped.

The Act also has strict guidelines forbidding an agent to charge more for a service than permitted. For instance, an agent cannot seek a bonus of $1,000 if they sell a property within 14 days if this arrangement causes them to exceed the maximum commission permitted in Schedule 1. However, there is nothing to stop the agent from negotiating a commission on a sliding scale, with the maximum commission payable if the property is sold within 14 days.

Commissions Expressed as a Percentage

Always express the agreed commission payable both as a percentage and as an estimated dollar amount (based on the listed/reserved purchase price or agreed rental charge) in the Appointment to Act. This reduces the risk of exceeding the permitted scale rate if a sale occurs at a price lower than the stated list price. This is also essential in the case of property being marketed without a price. If fees or commissions are renegotiated during a transaction, it will be necessary for the Appointment to Act to be altered and re-initialled by all parties to the original agreement, or a new Appointment to Act negotiated and signed.
Fees, Charges and Expenses
The Act makes provision for specific fees, charges and expenses to be incurred and recovered by the agent on behalf of the client. These can be paid in advance or re-imbursed by the client upon receipt of an itemised statement of expenditure, and must be detailed in the Appointment to Act.

A fee is the cost of a service provided by an agent. A fee can be charged for a service not normally considered a part of a real estate agent’s prescribed activities when selling, managing or renting properties.

A fee could be charged for the following services:

- supervising and inspecting major repairs and renovations, lodging building plans, and overseeing building applications;
- reading meters;
- coordinating advertising consultants, copy writers, photographers, graphic artists and designers;
- coordinating a marketing campaign that involves detailed market analysis, project or development feasibilities;
- consulting with architects, engineers and designers on behalf of a client; and
- providing written reports that do not involve the sale, management or rental of a property.

A fee cannot be charged or recovered for any additional agency service unless the client has authorised the agent in writing on the approved Appointment to Act form.

An agent is not permitted to charge a consumer a fee relating to the preparation of documents relating to a real estate transaction. This includes tenancy applications, lease agreements, management agreements, sales contracts, written market appraisals (relating to the sale or rental of a property) or listing documentation fees.
A charge is a cost incurred by the agent while performing duties on behalf of the client. A charge or cost is fully recoverable by the agent if authorised by the client and provision is made on the Appointment to Act. Charges are common in a continuing agency. An example of charges might be:

- bank fees;
- telephone, fax, and postage;
- courier services;
- photocopying; and
- travelling costs for the collection of rent or inspection of properties.

When the agent incurs a financial liability on behalf of the client this is known as an expense and could include:

- promotional fees which include advertising and marketing costs;
- searches;
- other consultancy fees such as decorators, tradespeople, pest control, building inspectors etc; or
- appointment of an Auctioneer.

All fees, charges and expenses must be quoted on the Appointment to Act as GST inclusive.

**Note:** Section 141 of the Act states an agent cannot claim for expenses unless authorised in writing from the client and actually expended by the agent. This has repercussions for agents who may be charging a general marketing fee without proof of itemised expenditure on behalf of the client.
Disclosure of Rebates
If an agent is receiving any benefit or rebate as a result of incurring expenses on behalf of the client, the type and amount of rebate/benefit must be fully disclosed on the Appointment to Act. The most common rebates available to agents are from print and electronic media advertising.

Transitional Procedures
The Act provided for the transition of properties for sale, rent or under management before the new legislation became law.

Any Appointments to Act that were entered into prior to 30 June 2001 shall be considered valid and in force. Agents who entered into agreements that are still in force and are materially affected by changes to the legislation are advised to seek legal advice. An issue of particular concern will be if commissions are still claimable under some original agreements. For instance, bulk project sales, particularly land and units, which had previously been treated as a commercial transaction are now be considered a residential transaction and subject to the residential scale of fees.

Existing property management agreements should not be affected whilst all parties are in mutual agreement with pre-1 July 2001 provisions.
Statutory Disclosures

Disclosure of Beneficial Interest to Seller

Agents and their salespersons are placed in a position of trust by vendors. Therefore if an agent or a salesperson seeks to obtain an interest in the property for sale, they must act fairly, honestly and ensure the vendor makes an informed decision to sell.

The *Property Agents and Motor Dealers Act 2000* requires that the vendor must not be disadvantaged by the transaction.

The definition of beneficial interest was changed in 2003 as part of the (Miscellaneous Provisions) Bill 2003 for the *Property Agents and Motor Dealers Act 2000*.

Real estate agents, auctioneers and pastoral houses are required to complete and use *PAMD Form 28 – Disclosure of Beneficial Interest to Seller* to disclose a beneficial interest in a property if they are the selling agent for the same property. The client must read and sign this form before the client signs a contract for the sale of the property.

Agents are no longer required to disclose in PAMD Form 28 if they have an interest in a property which they are selling.

In circumstances where an agent or salesperson has a beneficial interest in the purchase of real estate property, no commission can be charged.
Dealing with Buyers

The *Property Agents and Motor Dealers Act 2000* has made significant changes to the way in which an agent conducts a sales transaction with buyers. These changes include:

- a standard Warning Statement as the front page of all contracts;
- a 5 day cooling-off period for all residential contracts except for auction sales;
- obligatory advice to obtain an independent valuation and legal advice before signing a contract;
- obligatory disclosure rules regarding any benefit or commission an agent may gain from a transaction; and
- obligatory disclosure rules about any financial or business relationship an agent may have with a third party involved in a sale.

These major reforms were necessary due to the unprecedented growth in the property investment sector, and the convergence of investment related marketing activities with traditional real estate practices. With this growth has come a number of marketing activities that have been detrimental to some consumers. For instance, certain property marketing organisations have inflated the sale price of property to accommodate commissions and fees that were then passed on to business associates.

In some cases, consumers were paying considerably above the market price. This occurred particularly with interstate and overseas buyers. In addition, guaranteed rentals were also subsidised and underwritten so they were artificially high. Once the rental guarantees expired, consumers were not in a position to meet shortfalls and were forced to sell at prices substantially below original sales prices.
Disclosure to Buyer

Section 138 of the Act requires an agent to make disclosures to the buyer about any benefit the agent may receive in connection with the sale of residential property. Agents should detail actual dollar amounts they or related marketing companies expect to receive including regulated commissions and/or marketing fees.

The Disclosure to Buyer Form provides for two types of disclosure that may apply to a particular sales situation:

1. If the agent refers the buyer to someone for services in connection with the sale (for example: a pest controller, building inspector, valuer or lawyer) and the agent either has a business or personal relationship with the service supplier or receives, will receive or expects to receive a benefit from the referral, then the agent must disclose the nature of the relationship and disclose the benefit being derived from the referral.

2. The agent must also disclose any benefit the agent or anyone else has or will receive in relation to the sale, promotion of the sale or for any service in connection with the sale.

The Disclosure Form applies only to residential property sales. The Disclosure Form is a statutory form and can only be provided in the approved format. It must be provided to the buyer and signed by the buyer before a contract can be entered into. There are detailed instructions at the end of the form to help agents determine what
must be disclosed and what does not have to be disclosed to buyers.

The Disclosure Form must be completed in relation to any benefit the agent or any other person derives or expects to derive from the sale, promotion of the sale or service in connection with the sale. However disclosure about relationships only needs to be given if the agent has referred a buyer to a service provider for professional or other services and the agent has a business or personal relationship with the service provider or the agent has or will benefit from the referral. If an agent refers a buyer to a person for professional services and the agent does not have any business or personal relationship with the service provider and/or is not receiving any benefit, then that part of the Disclosure Form does not need to be completed.

**Implications for the Agent**

This disclosure has a major impact on agency practice. The agent is required to declare “if they have, or will be referring the buyer to persons for professional services”.

The term “professional” service is broad and agents are advised to disclose any business relationship that is the subject of a referral (eg lawyers, valuers, and financial advisers).

This provision also includes many of the services an agent has traditionally referred people (eg pest and building inspectors).

If the agent is receiving any benefit from the service provider, or feels obliged to refer business through a professional arrangement, then this relationship should be disclosed.

In other words, an agent should be cautious when making any referrals and if in doubt, disclose.
Some agents may take the attitude that it is prudent not to make referrals. However, consumers do expect this as part of the service. Modern real estate practice has become accustomed to delivering a high level of integrated service to consumers. This includes assisting consumers to explore a range of products and services relating to finance, conveyancing solicitors, architects, decorators/designers, building inspectors and property maintenance providers.

The important issue is how this service is provided. If an agent is genuinely assisting a consumer and making the appropriate disclosures, then all parties benefit.

One final warning comes about an agent’s legal liability when making referrals. Caution should be exercised when making any form of business or personal referral. Consumers should be advised to make their own investigations and to seek quotes from a range of advisers or specialists to satisfy themselves a fair and competitively priced product or service is being received.
The Contract Warning Statement

The legislation requires the top page of all residential contracts contain a Warning Statement (Section 366).

The Warning Statement:

• informs the buyer a cooling-off period applies;
• advises buyers of their rights under the contract, including when the cooling-off period starts and ends;
• alerts buyers to matters that require serious consideration before they sign the contract;
• advises buyers to seek independent legal advice and a valuation before signing a contract;
• informs buyers a percentage of deposit (0.25% of the purchase price) will not be refunded upon termination of the contract during the cooling-off period; and
• advises buyers if the seller is a developer the buyer cannot claim against the Claim Fund in the event of a financial loss, but can seek redress directly with the developer. (Developers are not required to contribute to the Claim Fund.)

The Warning Statement is a disclosure made by the seller to the buyer.

The Warning Statement must be in the approved form and in the correct current version.

The buyer must sign the Statement before he/she enters into the contract. Contracts that are entered into which do not have a Warning Statement, or contain a Statement not in the approved form, will be of “no effect”.

If a contract is terminated because of a defect in the Warning Statement or failure to supply a Warning Statement, the parties responsible for the Statement will be held liable to the buyer for legal costs and other expenses in relation to the transaction.

### The Cooling-Off Period

Section 368 of the *Property Agents and Motor Dealers Act 2000* requires a 5 day (business days) cooling-off period for sales of all residential property excluding auction sales.

### Sales Excluded from a Cooling-Off Period

There is no cooling-off period for properties sold under the hammer at auctions and non-residential property sales.

### The Meaning of Residential Property

Section 17 of the Act defines residential property as:

- a single parcel of land on which a place of residence is constructed or being constructed;
- a single parcel of vacant land in a residential area;
- a lot included in a community titles scheme, or proposed to be in a community titles scheme (including home units, villas, townhouses and group title house and land subdivisions);
- a lot or proposed lot under the *Building Units and Group Titles Act 1980*; and
• a lot shown on a leasehold building units’ plan to be registered under the Southbank Corporation Act 1989.

Non-residential property is referred to as:

• a single parcel of land on which a place of residence is constructed or being constructed if the property is used substantially for the purpose of industry, commerce, or primary production; and

• a single parcel of vacant land, if the property is:
  (i) in a non residential area; or
  (ii) in a residential area, but only if local government has approved development in relation to the property, the development is other than for residential purposes and the approval is current; or
  (iii) used substantially for the purposes of industry, commerce or primary production.

The definition of ‘residential’ relies heavily on the use/function of the property rather than its permitted uses. The onus is on the agent to determine the type of transaction and this will impact directly on the statutory cooling-off period as well as commissions payable and any limitation on sole or exclusive agency.

**Implications for Agents**

Areas where agents should show particular caution are:

• home offices and small businesses being run legally or otherwise from a residential property – the use is not defined as “residential” only if the use of the premises is substantially for commerce or business. Also consider if a home office/business is permissible under the relevant local government ordinances;
• land where primary production is still occurring at the time of sale;
• mixed use complexes with a residential and business component being sold on the one title;
• bulk project and land sales (certain projects and subdivisions could previously be treated as a commercial transaction); and
• boarding houses and flats on one parcel of land are considered a residential transaction.

Buyers may Waive Cooling-Off Period

The Act makes provision for a buyer to waive or shorten the 5 day cooling-off period. This may occur for instance where the buyer is keen to secure a property where there is more than one offer.

To avoid a situation where the buyer is put under pressure by an agent to waive the cooling-off period, the legislation requires the buyer to obtain a notice to waive or shorten the period. This notice can only be prepared by a lawyer on the approved form (and is known as a lawyer’s certificate). The lawyer who issues the certificate must be independent of the agent and the property owner and must be seen to be acting in the interests of the buyer in the matter. Notices under this section of the Act will be taken to be effective from 5 pm on the nominated date.
Buyers may Terminate Contract during Cooling-Off Period

A cooling-off period shall end at 5 pm after 5 business days. The buyer may terminate the contract at any time up to 5 pm on the due date by giving a signed notice to the seller or the seller’s agent.

If the buyer has not notified by that time, it will be assumed the buyer will proceed with the sale, subject to other contract conditions. The notice to terminate is not a prescribed form and there is no legislative requirement to provide any information other than the date and sufficient details to identify the contract and buyer in question.

Once this notice has been given the contract will be at an end and the seller must refund the deposit within 14 days. In the event of termination of the contract during the cooling-off period, the seller may retain a termination penalty equivalent to 0.25% of the purchase price stated on the contract.

**Note:** It would be sound business practice for an agent to ensure they secure at least the equivalent of 0.25% to allow for the termination penalty when taking an initial deposit on a contract with a cooling-off period.

Commencement of Cooling-Off Period

Section 365 of the Act requires the seller to give the buyer a copy of the contract signed by both the buyer and seller. When the buyer receives this copy of the signed contract, the parties are bound by the contract and the cooling-off period commences (subject to it being a business day).

For example, if a signed and dated contract is received by the buyer at 6pm on a Sunday, then the first day of the cooling-off period shall be
Monday. Therefore the cooling-off period should end at 5pm Friday next occurring, subject to there being no public holidays on or between the start and end of the cooling-off period.

**Note:** The onus is on the seller to prove the buyer has received a signed copy of the contract. This may be done by facsimile, a receipt signed by the buyer acknowledging receipt of the signed copy of the contract or some other way of establishing proof that the buyer has been given a copy of the contract.

**Lands not Lawfully Useable for Residential Purposes**

Practising agents will be familiar with this disclosure required by previous legislation. The one significant change is that the statement need only be given for the sale of vacant land.

The disclosure only has to be supplied to a buyer if the land is not able to be used for residential purposes or has an impediment that prohibits the construction of a residential building (for instance, it is a contaminated site, floodplain, or a slippage area).

The agent is responsible for giving this disclosure to the buyer. It must be presented to the buyer before the buyer enters into a contract to purchase the vacant land. This disclosure can only be in a written form in compliance with Section 149 of the Act.

Vacant land is described as “land on which there are no structural improvements other than fencing”.


General Responsibilities of a Licensee

The Property Agents and Motor Dealers Act 2000 retained many of the provisions from the Auctioneers and Agents Act 1971 regarding a licensee’s responsibility when running a real estate business. However, many areas are defined more clearly and responsibilities for supervision of employees are enhanced, particularly:

- the requirement to provide a salesperson’s employment authority;
- the requirement to keep an employment register;
- the limitations on employing certain persons; and
- the restriction on recovery of commission.

Salesperson’s Employment Authority

Section 130 of the Act requires a licensee to provide all registered employees with an employment authority that clearly specifies the activities permitted under their employment. This authority is not a prescribed document under the Act and responsibility for its preparation and content will rest with each individual licensee.

In particular, this authority should specify:

- expected standards of behaviour when dealing with consumers;
- a defined job description;
- authorisation to receive and bank monies;
- authorisation/limitations regarding signing of contracts and statutory documentation; and
- procedures for dispute resolution.
The provisions in both the employment authority and the employment agreement should be compatible so that an employee will have a clear understanding of his/her duties and responsibilities as well as employment conditions and right to remuneration.

The employment authority does not apply to persons not required to be registered (e.g., clerical) or to employees who hold a Property Agents and Motor Dealers (Real Estate Agent’s) licence.

**Procedures and Policies Manual**

Licensees should give serious consideration to compiling or upgrading their procedures and policies manuals, which could then form the basis of the employment authority.

**Requirement to Keep an Employment Register**

Section 159 of the Act requires a licensee to keep an employment register at each place of business. The register can be either hard copy or electronic and must contain certain particulars as prescribed in the Act:

- the name and address of non-clerical employees (this will include salespeople, employed licensees, trainee salespeople and trainee auctioneers);
- the registration and licence numbers of non-clerical employees;
- expiry dates for registration and licensing certificates;
- date of commencement (and termination) of employment;
• date of the employee’s employment authority;
• a copy of the employee’s employment authority; and
• the date and particulars regarding a change to the employment authority.

The Employment Register must be kept up-to-date and be available for inspection by a Fair Trading inspector when required.

Transitional Procedures
The transitional provisions do not specifically address salespersons employed at the time of the Act’s introduction in relation to the employment authority. However, Section 159 requires licensees to enter details of every employed licensee, salesperson and trainee auctioneer in the employment register.

It is highly advisable each employee is given an employment authority and is entered on the employment register in accordance with that authority.

Limitations on Employing Certain Persons
Section 164 of the Act states clearly it is an offence to employ a person as a salesperson who does not hold a registration certificate.

Note: There is no requirement for the licensee to sign off a prospective employee’s application for registration. An applicant is still required, however, to state the name and address of the prospective employer on the application form.

Section 164 of the Act also states an agent, as an individual licensee or a corporation, cannot at the same time employ themselves as salespeople. A licensee is responsible for an employee’s actions and cannot relinquish such responsibilities by acting as a salesperson.
Safety Issues

Electrical Safety

Agents play a key role in ensuring electrical safety in the community. In conducting your business you must comply with the electrical safety obligations under the *Electrical Safety Act 2002*.

You must ensure that your business is conducted in a way that is electrically safe. As a real estate agent you can also help save lives by explaining safety electrical requirements to potential buyers and sellers including:

- seller responsibility to declare whether the home has a safety switch; and,
- buyer responsibility to install a safety switch on premises within three months of transfer.

For further information on the *Electrical Safety Act 2002* and your obligations see the Electrical Safety Office website at [www.eso.qld.gov.au](http://www.eso.qld.gov.au) or phone 1300 650 662.

Curtain and blind cord safety

As a real estate agent (particularly if you are a property managing agency) you can reduce the hazard by alerting your clients to the potential danger and providing advice on the easy remedy. Both pull cords and inner cords that are used to raise the slats of blinds are a strangulation hazard for infants and children. The cheap and easy remedy to make curtains and blinds safe involves
cutting the cords so that they are out of reach of children or replacing the cords with a wand.

For further information regarding refer to the Curtain and Blind Safety Fact Sheet developed by the Office of Fair Trading at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or contact the Product Safety Branch on 3305 9613 or call 1300 658 030.

**Auctioneers**

The Act made significant changes to the activities of an auctioneer. There are no separate categories of auctioneer. One category will apply to all auctioneers regardless of whether they sell real estate or motor vehicles. Applicants, however, must be competent in the 4 subjects required under the *Australian National Training Authority Act 1992* and have completed at least 5 auctions under supervision.

Section 205(2), authorises an auctioneer “to sell a property by any means during the auction period”.

The definition of an “auction period” is a “period for which the auctioneer is appointed or otherwise authorised or permitted to sell the property”.

An auction period has traditionally been defined as the period of time the property is actually “put to auction”. An auctioneer’s role in this instance has been to put the property to auction. If the property was sold prior to or after the auction sale, the property did not sell by auction. Rather, it sold through private treaty negotiation. This could only be transacted by a licensed agent.
However, the Act permits an auctioneer to list a property for sale by auction under a separate Appointment to Act (Section 210). This appointment can be a single appointment or a continuing appointment and contains the same requirements as a real estate agent’s Appointment to Act form.

The ramifications on general agency practice are significant. If a person wishes to deal exclusively with auction sales, they will only require an auctioneer's licence rather than a real estate licence.

In the past, an auctioneer has been appointed for a specific task to be conducted on a specific date and time. However, an auctioneer can now enter into a continuing or single appointment with a client in his or her own right and transact a sale “by any means during the auction period”.

**Dealing with Sellers**

The licensed auctioneer is required to provide the same level of responsibility to their client as a licensed real estate agent. For instance, when they list a property for sale they are required to provide:

- the Appointment to Act by auction on the approved form;
- a disclosure regarding sole or exclusive agency; and
- a beneficial interest disclosure (where applicable).
Dealing with Buyers
The Act specifically excludes auctions from the cooling-off provisions. However, residential properties sold by private treaty during the auction period are not excluded from cooling-off provisions.

Agents and auctioneers should note that as they act for the vendor and vendor’s interest, they should avoid offering opinions as to possible selling price of the property to buyers. Apart from their responsibility to act in the best interest of the vendor, it might be held that if suggested selling price is substantially below the actual selling price that the agent or auctioneer has misrepresented the selling price to the buyer.

Employment Authority
An auctioneer who employs a trainee auctioneer is required to provide the trainee with an employment authority. However, the Act does not require the auctioneer to maintain an employment register unless the auctioneer is also a real estate agent who employs the trainee auctioneer.

Auctioneers Employed by a Real Estate Agent
If an auctioneer is employed by a real estate agent to conduct an auction on the agent’s behalf, then the agent must enter the auctioneer’s details into the employment register. However, the auctioneer does not have to be given an employment authority unless he or she is a trainee auctioneer.
The Operation of a Real Estate Agent’s Trust Account

Section 376 of the Act requires a real estate agent opening a new trust account at a financial institution to use the term “trust account”. You must complete a PAMD Form 18 – Notice of Intention To Open a Trust Account and obtain written approval from the Office of Fair Trading before an account can be opened. The trust account must also be operated through an office or branch of an approved financial institute within Queensland.

If an agent is opening a special trust account, the account’s name must include the words “Special Trust Account”. Under section 375 the licensee must also obtain written approval from the Chief Executive (OFT) before either of these accounts can be opened.

Under section 377 of the Act the licensee must notify the OFT once a trust account has been opened (confirmation), closed or changed by completing PAMD Form 19 – Confirmation of Trust Account Opening, Closing or Name Change.

Deposits into a Trust Account

A real estate agent must bank into an agent’s trust account:

- monies received from a real estate transaction including deposit and purchase monies. Although the Act does not make specific reference to
rent and bond monies, these are also considered amounts received by a licensee involving a transaction; and

- monies received with a direction for use. These are monies paid in advance to the agent with written authorisation to be used for specific purposes such as advertising, marketing expenses and searches.

Monies received by the agent for reimbursement of expenses do not have to be banked in a trust account.

Monies received by an agent which are not trust monies must not be paid into the trust account, see section 381 of the Act.

**Permitted Drawings from Trust Account**

A licensee may only withdraw monies, including transaction expenses, fees, charges and commissions from a Trust Account if:

- authorised in writing from all parties to the transaction (or their appointed representative); and

- monies are already being held in the account that can be drawn on for that purpose.

Agents are not permitted to withdraw monies from the Trust Account to pay expenses until they receive an invoice or account for that expense.

Commissions, fees, and charges cannot be withdrawn from the Trust Account until the transaction is finalised. In the case of a continuing agency, fees and commissions are to be drawn according to the provisions agreed to between the client and the agent in the agent’s Appointment to Act.
Only the licensee or a person authorised in writing by the licensee can withdraw monies from a Trust Account.

**Itemised Accounts to be Provided**

An agent is required to provide a full account of all monies received and spent during a transaction.

In the past, some agents have accounted for the balance of deposit only and have not supplied a detailed account of how advertising or marketing monies were spent. Now agents must account to the client for all receipts and expenditure. This includes deposits, bonds, advertising monies, searches, costs and fees and any adjustments for rebates.

The Act requires agents to deliver an itemised account to a client within 14 days of receiving a written request and within 42 days after the transaction is finalised if no written request is made.

**Audits**

The Act makes allowance for the appointment of a person who is not an auditor to act as an auditor under certain circumstances.

This provision relates specifically to agents in remote areas and who do not have access to a practicing auditor servicing the locality. This person must:
• be a suitable person;
• have at least a Diploma level tertiary qualification in accounting with an audit component; and
• have the skills and knowledge of the Property Agents and Motor Dealers Act 2000 to perform the task.

**Professional Indemnity Insurance**

The Act requires all appointed auditors to carry professional indemnity insurance with a minimum cover of $250,000.

**Audit Periods**

A trust account must be audited for each audit period the account has been operated. The first audit period usually ends eight months after the licence is first granted. This date then becomes the audit period end date for each year thereafter. You are required to have this audit conducted and then forward a signed original audit to the Office of Fair Trading within **four months** after the end of the audit period. This must be undertaken every year regardless of the licence being issued for one year or for three years.

However, when you keep a trust account and you stop being a principal licensee, within **two months** after you stop being a principal licensee you must:

• have your trust accounts audited by your auditor for the period in which such accounts have not yet been audited. (This period ends at the moment when you stop being a principal licensee); and
• forward the auditor’s signed original audit report to the Office of Fair Trading.
If you have not operated a trust account for the entire audit period then an audit is not required. However you must provide the Office of Fair Trading with a Statutory Declaration stating you did not operate a trust account for that period.

The auditor must also make two unannounced examinations of your trust account during a twelve month audit period.

**Receipting Trust Monies**

Part 7 of the Regulation to the Act details how agents should maintain their accounts, funds and records in relation to their business.

**New Receipt Format**

The Act requires an agent to only use a receipt headed:

"Property Agents and Motor Dealers Act 2000 –2000 Trust Account Receipt". The receipt must contain the:

- name of the licensee;
- date of receipt;
- name of person on whose behalf the receipt was completed;
- name of person on whose behalf the money was received;
- brief description of the transaction/matter for which the money was received;
- amount received in numerical figures;
• manner in which the money was received (cash, cheque, credit card, electronic transfer); and
• signature of the person who is completing the receipt.

The use of any other form of receipt, including interim receipts, will be a breach of the Act.

Transitional Provisions

Some agents may still be holding trust account receipts titled *Auctioneers and Agents Act 1971*. Section 615 of the Act does make provision for receipts recorded on those documents to be valid. However, the Office of Fair Trading requests licensees to stop using and dispose of the old receipts as soon as possible.

Issuing Receipts

A receipt must be issued immediately trust money is received.

In the case of electronically transferred monies, a receipt must be issued as soon as the licensee becomes aware of the receipt of the trust money. This will most likely be a transaction notification statement issued electronically by the financial institution.

The Act makes no provision for a receipt to be automatically forwarded to the person paying the trust monies. However, it does state a receipt must be given promptly to the person upon request.

Depositing Trust Account Monies

The agent must keep a copy of all trust account deposit forms. However, this is not possible for monies that are transferred electronically.
Section 44 of the Regulation states in the case of electronically transferred monies, the agent must arrange to receive, at least weekly, a transaction report statement from their financial institution showing all electronic deposits made during that period. This record must be retained by the agent as evidence of the deposit.

Reconciliation of the Trust Account Cash Book
The Act requires this reconciliation “as soon as practicable after the end of each month”. It is sound industry practice to have the reconciliation finalised not later than 5 business days from the end of the month.

Computerised Records
The Property Agents and Motor Dealers Regulation 2001 contains strict guidelines for keeping computer system records. The responsibility for the maintenance of records is placed fully on the agent. Basically, if there is a computer malfunction and records are lost, the agent will be liable for lost data and can be fined.

The Act requires an agent to set in place a number of precautions so records cannot be lost. The agent must:

- use a computer system with the capacity to record and store all the necessary information for record keeping according to the requirements of the Act;
- as soon as it is practicable at the end of each month, make a print out of
trust account records including the trust ledger account, the reconciliation where applicable, and the reconciliation of the financial institution statement (these records must be stored in a separate and safe location);

• ensure the computer system is backed up at least once a month; and

• ensure all backed-up data is stored on a computer disk or other electronic device and kept in a safe, off-site location not affected by magnetic interference (this location must be in another physical location away from the office, such as a safe in the licensee’s home).

Limitations on Storage of Information
The Act requires an agent to store all data and information relating to any transaction for at least 5 years.

False and Misleading Representations about Property
The Act has greatly enhanced provisions regarding the way an agent provides information to consumers. This section of the Act brought agency legislation in line with modern consumer laws like the *Fair Trading Act (Queensland)* 1989 and the *Trade Practices Act (Commonwealth)* 1974.

The prohibition against an agent making false or misleading representations about property has been strengthened to protect customers when an agent is promoting property for sale or for rent.

In particular, the provisions prohibit any person involved in the marketing, promotion or sale of residential property from engaging in unconscionable or misleading conduct, and making false representations.
Matters property agents should pay particular attention to include the:

- value of the land;
- land's income producing potential;
- sales history of the land; and
- income tax benefits of buying the land.

Section 574(3) of the Act in particular states “a representation is taken to be false or misleading if it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist”. Put simply, an agent may be prosecuted for an offence if they:

- lead a consumer into believing a fact regardless of whether they intended to mislead them or not (innocent or negligent misrepresentation);
- knowingly permit a consumer to draw incorrect conclusions (fraudulent misrepresentation); and
- remain silent when there was a duty to disclose a fact.

Most importantly an agent can be prosecuted regardless of whether a consumer has entered into a transaction or not and regardless of whether losses have been sustained.

This improved legislation was drafted to deter high-pressure marketing strategies, particularly in relation to agents and developers making exaggerated claims about investment returns and rates of capital growth for residential investment property.
Marketing Properties with a Low “Lead-in” Price

Section 574 puts agents who have been promoting properties for sale with low lead-in prices on notice. Statements such as “bidding expected to start from” or “buyers from $xxx should inspect” or “owner will entertain offers from $xxx” may be considered misleading. Agents who market property using such tactics should review their marketing strategies and seek legal advice.

Representations Regarding an Agent’s Competence

Agents and developers must exercise caution when making statements about matters when they do not possess the skills or qualifications to make such a statement or promise.

The following are some examples:

• a sales agent quotes potential rental returns on a residential property without consulting a property manager;
• a developer or sales agent states the property will have 10% growth over the next 5 years;
• an agent appointed to sell a business promises a potential buyer business opportunities for a certain type of business will expand over the next few years, or states there will be no comparable businesses setting up in competition in the foreseeable future; or
• an agent tells a prospective buyer the cracking in a building is not serious and just “settlement cracks”. Unless the agent is a qualified builder and is making the statement as a suitably qualified person, they should not be making such a representation.
Agents who make such claims may be requested to substantiate how they arrived at such an opinion by the Chief Executive (OFT). If the Chief Executive is not satisfied the agent had grounds to make such a statement, the agent will be the subject of enforcement action.

Real estate agents need to be aware of the provisions of Section 573A – Misleading Conduct, Section 573B – Unconscionable Conduct and Section 573C – False Representations and other Misleading Conduct in relation to residential property. While these provisions are primarily for marketeers, agents may fall within this definition and be subject to the sanctions which can be imposed for contravention of these provisions.

Sections 573A, 573B and 573C were parts of the Act introduced by amendment in September 2001.
Property Agents and Motor Dealers Regulation 2001

Code of Conduct

The Real Estate Agency Practice Code of Conduct forms a part of Property Agents and Motor Dealers Regulation 2001 and is enforceable by law.

The way real estate agents conduct their business has undergone enormous change over the last decade. This has required a comprehensive reassessment of modern day business practice and ethics.

The Code of Conduct reflects these changes and sets challenges for many agents who have not yet become aware of, or complied with, new consumer guidelines.

The Code of Conduct is a unique combination of traditional agency law and modern consumer law. Traditionally an agent has been legally bound by their fiduciary duty to their client. However, this relationship is under pressure from more modern and powerful laws that carry with them additional consumer protection responsibilities. For instance, the law of “obedience” to the client can be challenged if it is not in the best interests of another consumer involved in a transaction.

The Code of Conduct is intended to become the basis of Queensland real estate “Best Practice” and will require many businesses to conduct a complete overview of office policies and procedures.
Agents who ignore or breach the provisions of the Code may be liable for disciplinary action before the Tribunal.

Agents who are members of a professional body such as the REIQ or a franchise or marketing group, should seek assistance from the Institute or a relevant group to ensure your business complies with the code. The REIQ has prepared documents and material for this purpose.

Agents who do not have any membership or association with the above groups should consult their solicitor, accountant and/or a management consultant to ensure their office systems comply with the Code.

The code equally applies to salespeople and so all references to agent should be interpreted to include salespeople except where clearly indicated otherwise (i.e. the use of licensee instead of agent).

**Objectives of the Code**

The Code aims to increase accountability of agents for their actions in accordance with good agency practice and the consumer protection objectives of the Act. This will be achieved by setting standards for agents:

- establishing principles for fair trading in real estate agency practice;
- providing a system for complaint resolution for real estate agency practice; and
- providing increased flexibility in enforcement measures.
Core Rules of the Code
A licensee is required to conduct their business in full respect of the law. This includes the Code of Conduct, their fiduciary obligations and all laws relating to other matters involving their business activities.

Any instruction given to an agent that contravenes an agent’s respect for the law will not relieve the agent’s responsibilities under the Code.

Clause 6  Fiduciary Obligations
A licensee’s fiduciary obligation to their client is the observance of a special duty of trust. It means the agent puts the client’s interests above all others, including their own.

Clause 7  Honesty, Fairness and Professionalism
This clause acts as a sweeper for all the qualities that agents should exhibit when conducting their business. We have just seen that by law, the agent is required at all times to put the client’s interests above those of other parties, including the agent and the customer. However, the agent still has a duty of care to a customer and must treat them honestly and fairly. This means the agent must demonstrate the above qualities regardless of who they conduct business with.
Clause 8  Skill, Care and Diligence
This clause requires an agent to show caution and care when undertaking any transaction so his or her client will not suffer as a result of the agent’s actions. This includes completing work on behalf of a client as soon as it is reasonably practicable. For example, the immediate banking of deposits and notification if a deposit cheque is dishonoured or is not tendered by the due date.

It also requires an agent to prepare accurate, legally binding paperwork and have documents signed off as soon as possible.

If a tenancy or sale does not proceed as a result of the agent’s negligence the agent may be in breach of the Code.

Agents should take care to ensure they have the necessary skills to competently complete services for which they have been engaged.

Clause 9  Agent to Act in the Client’s Best Interest
This clause underlies the principle of an agent’s fiduciary duty to their client. At all times an agent must uphold the client’s best interests in a transaction, and should not be persuaded by any third party to neglect that duty.

For instance, a buyer promises an agent that if they can secure a redevelopment site for them at a certain price to make a development viable, then the agent shall be given the marketing rights to
that project. Under such circumstances, the agent cannot be influenced by such a promise or representation and must continue to achieve the best price for the client.

Likewise, an agent cannot attempt to sell a client’s property to a friend at a price that could be considered below the competitive market price.

An agent shall always act in the client’s best interest by securing the best price on the best terms and conditions for the client.

This means all dealings with a customer must be clearly focused on this outcome, and if necessary, the customer should be made aware of that fact. For example, if a customer expresses interest in a property and asks the agent for their opinion regarding a realistic offer, then the agent must not lead the customer or suggest the property can be secured for less money or on terms less attractive to the client.

**Clause 10  Agent to Act in Accordance with Client’s Instructions**

This clause replaces the traditional fiduciary requirement of Obedience to the Client.

An agent has a duty to abide by the written instructions of a client. However, if those instructions breach another law, Code, or their fiduciary duty to another client, then they must decline those instructions eg a property owner instructs an agent not to reveal to prospective buyers that a property was flooded.

Under such circumstances an agent should refer the client to a solicitor and take their written instructions from the appointed solicitor. In a contentious situation, a solicitor will mediate and clarify instructions on behalf of their client to ensure they are of a legal nature.
Other instructions an agent must be cautious about concern matters relating to stamp duty, capital gains tax and cash transactions, especially those relating to a sales price that differs from a contract price.

**Matters Relating to Price**

Agents must also act according to price instructions.

The requirement in clause 10 for an agent to act in accordance with the client's instructions also impacts directly on how an agent represents the price of a property.

An agent is required to represent a property at the price and terms instructed by the client. This has far reaching consequences with regard to soliciting offers. Except for auction, an agent must not lead or encourage a customer to make an offer by suggesting they start negotiations at a price below the listed.

Nor should an agent state the price of a property is negotiable without the client’s written authority.

Clause 10 also applies to advertising properties with low lead-in prices that differ from prices discussed and confirmed with a client. Under these circumstances a property owner is entitled to make a complaint against an agent who has not represented the price of the property correctly in the market place.
This clause also states if the price an agent has been instructed to rent or sell a property differs from the agent’s market appraisal then the agent is required to inform the client of their difference in opinion. This should be substantiated through a research document such as a Competitive Market Analysis (CMA).

**Clause 11   **Agent to Keep Client Informed of Developments

Clause 11 requires agents to keep their client updated on the progress of a sale or rental, including market feedback from prospective buyers and tenants regarding the price.

Although the Code does not specify how regularly a client should be updated, it is recommended a written update should be supplied:

- at least weekly (properties for sale); and
- whenever the agent has a matter of relevance that needs to be conveyed to the client.

If an agent didn’t already have a system in place for regularly reporting to clients in writing for rentals and sales’ listings, then they were required to implement this system from August 2001.

Clause 11 also requires an agent to immediately communicate to the client every expression of interest, whether written or oral, unless otherwise instructed in writing. This has wide-ranging implications for an agent.

Unless the agent is authorised to the contrary on the Appointment to Act, then they are required to relay all verbal expressions of interest. This leads to a great deal of uncertainty as a customer who expresses an interest in a property eg, “This is the sort of property I’ve been looking for!”
could actually be making an expression of interest or simply relating a comparative viewpoint to the agent.

Under the law of Agency, an agent could act in a fiduciary role in protecting the client’s interests and screening offers on behalf of the client. This meant the agent, if authorised, could negotiate and generally act on behalf of the client.

Unless the client specifically instructs the agent in writing to the contrary, an agent must ensure all offers and expressions of interest are immediately relayed to the client.

To protect the client’s interests in a transaction, wherever possible the offer should be in writing or presented on a similar legally binding document.

Effective and timely communication is the key to a successful client/agent relationship.

Clause 12 Agent to Ensure that Employees Comply with Act and Code

An agent who is a principal licensee must ensure all registered and licensed employees comply with the Code of Conduct and the Act. Ultimately, it will be the principal licensee’s responsibility to ensure employees are conversant with the Property Agents and Motor Dealers Act 2000, and any errors or misrepresentations that result from failure to observe the legislation shall be born by the principal licensee.
From a practice viewpoint, a principal licensee should introduce systems to ensure all contractual paperwork relating to the Act is prepared under supervision and checked by an appointed and suitably qualified person before it is executed.

**Strictly Supervise Registered Employees**

Clause 12 also requires an agent to take responsibility for the supervision of employees and ensure their actions benefit the client.

Although the Act does not define terms of supervision, the Chief Executive (OFT) will review each situation according to the level of supervision being given to salespeople and a business generally. For instance, a licensee should ensure supervision is delegated in their absence by a substitute licensee. Alternatively, the licensee should be readily available for contact when not in the place of business.

The principal licensee should carefully disclose in the Employee’s Authority, those functions and duties the employee is engaged to perform, and give directions on functions and duties the employee is specifically instructed not to perform, that is, those matters a salesperson is not authorised to do.

**Code 13 Representations by Employees**

The principal licensee must take reasonable steps to ensure an unregistered or unlicensed employee of a licensed agent does not represent themselves or otherwise to act as an agent whilst unlicensed.

The responsibility for ensuring all employees are correctly licensed or registered lies with the principal licensee as well as the employee.
This clause also applies to illegal activities performed by a licensed or registered employee of the agent. For instance, a registered employee of a Restricted Letting Agent cannot transact a sale. Nor can an employee claim to be a substitute licensee if they have not been appointed according to the provisions of the Act.

**Clause 14 Fraudulent or Misleading Conduct**

This clause reinforces the requirements of section 38 of the *Fair Trading Act (Qld) 1989* and sections 573A and 574 of the *Property Agents and Motor Dealers Act 2000* and clearly makes it an offence to mislead a consumer or misrepresent a fact or information in any way.

For instance, telling a customer there is another party interested in a property when there is not to secure a transaction could result in a breach of this clause.

The range of variables for fraudulent or misleading conduct in the property industry is extensive. At all times an agent must ask themselves, am I in any way manipulating people or circumstances to my desired outcome? If the answer is yes, or "maybe", then don’t do it.

An example of misleading conduct could be where an agent, in seeking a listing, exaggerates the market price of
a property in order to secure the listing, then contrary to their obligation to the client, more effort is spent on “selling down” the purchase price to the vendor than actually marketing and selling the property to purchasers at the listed price.

**Clause 15  High Pressure Tactics, Harassment or Unconscionable Conduct**

An agent must at all times act in a manner that will not jeopardise the rights and interests of others.

Clause 15 in particular indicates an agent must not use high-pressure tactics, harassment or unconscionable conduct in a real estate transaction.

For guidance, refer to Section 578B of the Act which defines unconscionable conduct and effectively prohibits the stronger party in a transaction from taking advantage of its position by behaving in an unfair or unreasonable manner. Examples of unconscionable conduct in a real estate situation could include:

- refusing to leave someone's home until they have signed a document;
- telling a consumer it’s OK to sign a blank document (you’ll fill in the details later);
- taking advantage of a consumer’s poor language or comprehension skills;
- asking people to sign a document they don’t understand without first explaining it to them;
- taking advantage of someone’s lack of knowledge to gain an advantage over in a business transaction (eg telling an elderly unit owner her unit is worth 30% less than the market price and then selling it to a friend); and
• taking advantage of a consumer in an especially vulnerable position (e.g. contacting the bereaved to list a deceased estate – *funeral chasing*).

Having a beneficial interest without full disclosure is a classic form of unconscionable conduct.

**Clause 16  Claiming Membership or Endorsement**

An agent must not claim to be a member of or be endorsed by any organisation or association when they are not. This clause has far ranging implications on various aspects of real estate practice.

Firstly, it is misleading to claim to be a member of a professional body, franchise or marketing group when you have never been a member or have had your membership terminated.

Likewise, falsely claiming association with certain businesses who broker finance, insurance, or other related property services is also an offence.

This has particular implications for agents who sell new residential dwellings and claim they are an approved or endorsed agent for state regulatory building authorities (such as BSA) when they are not.

Contravention of this section may also lead to prosecution under Section 40 of the *Fair Trading Act 1989*. 
Clause 17 Conflict of Duty of Interest
This clause is closely aligned to the principle discussed in clause 9. It deals with the agent’s integrity and responsibilities to their client in a transaction.

An agent should not allow themselves to be influenced by any issue or by a third party who may be associated with the agent, and should always act in the best interests of their client. A relevant third party includes service providers such as financial advisers and brokers, solicitors, building and pest inspectors.

Nor should an agent put themselves in a position where they cannot represent the client’s best interest due to a business dealing or other matter that the agent may be directly or indirectly involved with.

However, the clause also requires that a client cannot be disadvantaged as a result of the agent’s legal obligations to their client.

Fees and Commissions from a Third Party
An agent is not permitted by law to profit at the expense of their client. This can occur by accepting secret commissions, kickbacks, spotter’s fees, and rebates etc while acting on behalf of a client.

By law, a secret commission is any fee or other benefit an agent receives from a third party whilst acting for a client. It is only a secret commission if the client is not aware of the arrangement.

Any monies earned by an agent from a third party (whilst under appointment) should be passed on to the client.

An agent however, can receive monies from a third party if the client is fully aware of the existence of that arrangement, and has given their written approval.
Client Bonuses
Please note an incentive/bonus offered to the agent by the client is not a secret commission and does not require disclosure.

However, an agent should not accept a bonus or incentive payment if it exceeds the maximum fees payable for the transaction. (This does not apply to non-residential transactions.)

Clause 18 Soliciting through False or Misleading Advertisements or Communications
This clause brought the Property Agents and Motor Dealers Act 2000 in line with provisions of the Fair Trading Act (Qld) 1989.

An agent must not solicit clients or customers through false or misleading advertisements or other communications. A false or misleading advertisement could be any of the following:

- bait advertising – where the property being advertised does not exist, or is not available to the consumer as represented. Areas of particular concern involve advertisements regarding location, aspect, legal use of the land or buildings, financial/rental returns, anticipated capital growth, tenancies, and special offers and promotions attached to the sale or rental of property. The spectrum of bait advertising includes:
• fictitious properties being promoted to draw enquiries;
• properties that have been sold or withdrawn from sale but are still being promoted for sale (be careful of old listing cards in office window displays and signage here!);
• continuing to promote projects and subdivisions with low lead-in prices when the low priced properties have actually sold;
• placing ‘for sale’ or ‘for rent’ signs on properties that are not for sale or rent; and
• placing ‘sold’, ‘let’, ‘under contract’ signs on properties that are not sold or let;
• failing to identify oneself as an agent in advertising and marketing material;
• making offers to consumers that are not true or cannot be substantiated (eg distributing leaflets to home owners telling them prices have never been better and it is a good time to sell, when in fact the market is experiencing a downturn); and
• making misleading representations about the price payable for a property (for instance agents should be particularly cautious advertising low lead-in prices if the client is not prepared to accept the price the property is being promoted at).

The law allows for a certain amount of “puffery” or salesmanship in advertising and marketing communications (for instance, terms such as “Neat as a pin!” or “Prime location” etc will not be considered misleading).
False or misleading communications also relate to the way an agent deals with all consumers. For instance, an agent shall be in breach of the Code if they deliberately provide a prospective client with an over-inflated price to secure a listing or an over-inflated rental estimate to secure a sale to a prospective investor.

Clause 19  Prior Appointment of Another Agent or Auctioneer

An agent is required to protect consumers from unintentionally paying 2 commissions.

An agent who solicits or receives an appointment to act on behalf of a client must take reasonable steps to ensure the property is not already under some form of controlled listing with another agent.

This clause has significant ramifications on agency practice.

While an agent must provide the client with a compulsory disclosure when entering into any sole or exclusive agency agreement, the agent must also ensure the client understands there are certain circumstances that could lead to the payment of 2 commissions.

The client must also be made aware they may suffer damages for a breach of contract if they are also listed with another agent.

Areas where caution should be particularly shown are:
• joint marketing agencies where there is no clear instruction indicating whether one commission is to be shared between agents or a commission will be paid to each agent upon completion of the transaction;

• where a client signs a contract believing the selling agent is in conjunction with the listing agent. (If they are aware of the other agents’ activities under these circumstances, both agents have a duty of care at law to inform the client of their liability to pay 2 commissions at the time of negotiation);

• where there is a dispute about who introduced a customer (this can occur with a controlled or an open listing where for instance, a customer originally inspected a property with an appointed agent, but they subsequently purchase or lease through a different agent); and

• attempting to solicit clients that are clearly under a sole or exclusive agency as apparent by the listing agent’s signage.

Note: In the event of a consumer complaint regarding the introduction of a customer to a property, it is likely the dispute will revolve around who was the “effective cause of sale”.

The Code of Conduct requires the agent to be fair in their dealings and to co-operate with any judgements made by a court or dispute mediation process if there is a dispute involving an agent and a member of the public.

Although the Code does not specify this, the preferred outcome would be for agents to co-operate so a consumer does not unintentionally suffer financial hardship as a result of a real estate transaction.
Clause 20  Agreement to Act in Conjunction

The Code of Conduct requires an agent to raise the issue of conjunctions with a client at the time of listing a property for sale or for rent.

Because there is no specific provision for conjunction in the required Appointment to Act, this will need to be incorporated into the agent’s additional listing paperwork.

The clause states the agent must disclose to the client the licensee’s conjunction policy. It also states an agent must inform the client which agents they are willing to conjunct with and the terms and commission apportionment payable under the conjunction.

The Code is clear in its intent: an agent must conjunct if the client authorises a conjunction sale. This authorisation should be in writing as part of the agent’s appointment.

The most important consideration here is that the client, and not the agent, is in control of conjunctions.

A licensee’s office policy regarding conjunctions is of little relevance in the eyes of an agent’s fiduciary obligation to a client and the requirements of the Code.

A principal licensee may accept or refuse a conjunctional offer from another licensee. However, whatever the licensee’s policy is, it must be disclosed in the appointment form and agreed to by the client.
**Clause 21   Advice as to Market Price**

Clause 21 applies to pricing a property on behalf of a client.

An agent, when pricing a property for sale or for rent, must provide a client with up-to-date market research and information to substantiate how they arrived at that price.

This should be in writing in the form of a research document such as a CMA that summarises recent sales of similar properties that directly compare to the subject property.

It should also list comparable properties currently for sale or for rent so the owner is fully informed about current competition in the marketplace.

This section is linked to Section 14 and 18 of the Code.

**Don’t Deliberately Mislead**

It is an offence to deliberately mislead a client on the price of their property. This can relate to underpricing or overpricing properties for sale and for rent.

The intent of this clause is to halt the practice of “Buying Listings” particularly in areas where listings are in high demand or where an agent has another sale contingent on a property achieving a certain market price.

If an agent cannot substantiate how they arrived at a certain market price, they are not acting in the best interests of their client.

Agents who deliberately solicit (directly or indirectly) low offers to “educate” a client into reducing their price are also in breach of this clause.
This practice was popular with some agents as a pre-auction education strategy. The practice of putting a client on “a roller coaster ride” is unethical and will constitute an offence.

All feedback regarding price to assist the client to arrive at a realistic reserve/selling price must be conveyed through substantiated, factual information that can be verified through a legitimate source such as genuine customers who have inspected the property.

**Marketing Without Price**

An agent is required to provide a client with current market research and customer feedback regarding a likely market price irrespective of whether the property is to be marketed with or without price. For instance it would be an offence to suggest that a property should be put to auction to establish a fair market price without first discussing with the client a current market price estimate for the property.

Avoidance of the issue of price may be misleading. This would be particularly relevant when the agent, through their silence, has lead the owner to assume the property will achieve a higher price than a current market estimate would suggest.

An agent is also required under the Code to advise the client of any change of circumstance that will impact on the
price of a property whilst it is on the market for sale or for rent. For instance, a similar property may sell for considerably less than the asking price of the subject property.

**Bait Advertising**

Agents must advertise properties at the agreed listing price. Agents should not list properties with a large price range (eg $250K – $450K) unless the client is willing to accept a price below market value. Large price ranges can also mislead potential buyers into entering negotiations and incurring the cost of property searches when in fact the real value of the property is outside the buyers price range.

Disciplinary action including the possible loss of licence, fines and damaged reputation when they engage in misleading or deceptive conduct or fail to act in accordance with client instructions.

**Clause 22 Agent to Find Out and Verify Ownership and Property Description**

An agent must take all reasonable steps to verify ownership and a real property description for a property so it can be correctly described on any legal documentation.

This requires an agent to conduct a title search on the property. There is provision in the approved appointment to act for the cost of a title search to be met by the client.

**Note:** Some property searches will not provide up-to-date ownership information. A title or rates search is legally considered the most reliable source of information.
Clause 23  Agent to Find Out or Verify Material Facts

An agent should also take reasonable steps to satisfy themselves the information being provided by a client or third party is correct and up-to-date.

Clause 23 places the onus of verifying the correctness of information on the agent.

This clause raises two important requirements:

- a title search or some form of ownership search must be conducted before listing or pricing a property; and
- the agent has a duty to update information by conducting further searches when necessary. This is particularly important when dealing with properties run by a body corporate (information should be verified immediately after an AGM for instance) or commercial properties that have additional local government compliance and ongoing maintenance requirements to meet.

An important aspect of this clause is the agent’s responsibility to thoroughly investigate and research all the market facts that relate to the price and the highest and best use of the client’s property.

An agent by law is seen as an expert in their field. The law stipulates a client in particular should be able to rely on an
agent to provide balanced, researched advice and information to assist them to achieve the maximum price for a property.

The underlying requirement in this clause is the need for the agent to conduct comprehensive searches on a property before it goes to the market. This is particularly important when a property is for sale.

The legal onus is on an agent to provide the client and customer with accurate and relevant information to assist them to make informed decisions. This means an agent should not be pricing a property for sale or rent unless they have:

- conducted a title search to ascertain correct land area and subdivision information, along with registered local government notices, restrictions and encumbrances over the property;
- ascertained whether the building structures and current use are legal (compliance); and
- in the case of a community title scheme, conducted a body corporate search to ascertain relevant information relating to the affairs of the body corporate.

By conducting relevant searches, the agent is fulfilling their fiduciary responsibility to protect their client’s interests through ensuring there are no errors in information being passed on to tenants and buyers.

For instance, the agent should encourage the client to reveal all relevant facts about the property to ensure accurate information is being gathered. This reduces the risk of misleading representation.
Clause 24  Agent to Encourage Disclosure by Client
When listing a property for sale or for rent it is very important that the agent follows a procedure to ensure all relevant issues are discussed with the client, and the client is given every opportunity to reveal the pertinent information as it arises.

The Listing Form
When listing a property for sale or for rent, agents would be advised to use a listing form that clearly highlights the relevant information required from the client. The listing form should include:

- ownership details;
- the names of the client’s legal representatives;
- Real Property Description and title reference information;
- zoning (it should also be noted whether vacant land is suitable for residential purposes);
- inclusions in the sale/lease;
- tenancy information where applicable;
- outgoings such as rates/levies and tenant’s contributions to maintaining the property;
- whether building works comply with local government by-laws;
- relevant affairs of the Body Corporate where applicable;
- an income statement where applicable; and
- whether the property is adversely affected.
Therefore it is important that the client signs off the listing form so that contentious information can be confirmed and verified (eg, the “inclusions” in a sale).

The contents of the listing form should complement the authority to act and not contradict or reduce the authority in any way.

**Clause 25 Disclosure to Customer that Agent is the Client’s Agent**

Clause 25 is a modern consumer requirement and reflects the legal relationship an agent has to establish when dealing with clients and customers. The agent has traditionally been bound by their fiduciary duty to their client. This means the agent must represent the client’s interests in utmost good faith.

However, many customers are not aware of this relationship and assume the agent will solely represent their interests in a transaction.

The clause requires an agent to inform buyers and tenants of their legal commitment to the client. The agent must also warn the customer that anything said to the agent during discussions or negotiations may be passed on to the client.

For example, a prospective buyer indicates they would be prepared to pay $200,000 for a property. However, they instruct the agent to submit an initial offer of $190,000. The agent would then have a duty to achieve the $200,000 for the client even though the client may have accepted an offer of $190,000. Licensees have a
responsibility to educate their registered employees to deal with these situations in a professional and legal manner.

An agent’s fundamental obligation is to the client. Under no circumstances should an agent lead the customer to believe they are working for them unless the agent has been appointed through a buyer’s or tenant’s agency.

**Note:** An agent cannot act for both parties in any real estate transaction.

**Clause 26 Referral to Service Provider**

An agent cannot claim to be independent from a service provider when in fact they are receiving some kind of financial or material benefit directly or indirectly from the transaction.

For instance, an agent may refer a customer to a certain carpet cleaning company. However, they believe they are independent because they have no formal agreement to receive any financial incentives for the referrals. However, 6 months later when the licensee asks the same carpet cleaning company to clean the carpets in the office, that company may well provide the service free of charge or at a discount rate. Under such circumstances, the agent is not independent of the service provider.

All relationships of this manner should be revealed on the PAMD form Disclosure to Buyer.
Clause 27  Goods and Services
An agent is only permitted to incur expenses for goods and services on behalf of a client if authorised first in writing.

If an agent is instructed to incur expenses on behalf of a client, they must exercise care and investigate the product or service fully to ensure they are being secured at a competitive price.

This clause is particularly relevant to property managers and restricted letting agents, who refer business through a network of preferred business associates, sometimes at prices higher than a competitor offering a comparable product or service.

Clause 27 puts agents on notice that action may be taken against them if they cannot prove they secured the best deal for their client. For this reason, it would be wise to seek at least 2 or 3 quotes for regular work ordered by an agency to ensure prices remain competitive. An agent would also be advised to keep these quotes on file for reference if requested.

Clause 28  Inducing a Breach of Contract
An inducement is the act of persuading or using an incentive to end a legal relationship between contracting parties.

An inducement under this particular clause relates to inducing a breach of contract between a client and a customer. In effect, these relate to sales contracts and letting agreements where there is a contractual relationship between a seller and a buyer or a Lessor and Lessee.

Agents must be careful how they approach their day-to-day business activities when canvassing business and must not interfere in an arrangement that the client has with a customer.
Areas of particular concern are where the agent might be seen to be inducing a breach of contract by arranging a back-up contract without the prior knowledge of the client or customer, or inducing a tenant or buyer to enter into an agreement with another client without the first client’s knowledge.

It is also important to remember this clause applies to transactions involving customers as well as clients, and it may apply to situations where the agent has encouraged gazumping in a transaction. Under such circumstances, an aggrieved customer may be able to take action against an agent for a breach of the Code.

Where it can be shown an agent has deliberately approached a client or customer to seek their business in the full knowledge a contractual arrangement already exists, it may be considered a breach of the Code.

Clause 29  Duty to Obtain Maximum Sale Price

This clause has wide-ranging implications on agency practice and may be subject to interpretation in the courts.

The clause reads “A real estate agent must obtain the maximum sale price for a client’s property”.

The intention of the clause is clear. The agent must achieve the maximum price. The repercussions however go much further. For instance, to achieve the best price the agent must be able to demonstrate that:
• they have advised the client on the most appropriate listing option for the style of property and the prevailing market conditions;
• they have fully researched the market price and can satisfy the client the list price is the premium in the marketplace;
• if the property is listed without a price, the agent must be seen to be encouraging the market to pay a premium price and not to encourage low lead-in offers or bids;
• the property has been well marketed and exposed in the local marketplace – or in the case of specialised property, to the researched target market to achieve the best price possible; and
• all offers and expressions of interest are submitted on the property and the agent and client can be satisfied all prospective buyers have been given the opportunity to submit an offer before a transaction is entered into.

This clause will put agents on notice that a sale, especially if it is conducted by private treaty negotiation, could result in a breach of the Code unless the above criteria can be satisfied.

Agents who also negotiate a sale of a property prior to auction must ensure they have contacted all known possible bidders to satisfy the client the best price has been achieved outside of the auction process.

**Clause 30   Opportunity to Obtain Independent Advice or Representation**

A client or consumer has the right to seek independent advice from a third party before entering into a real estate agreement or contract. For instance, agents who insist the consumer does not need to have their solicitor look at a contract or a commercial lease agreement before signing would be in breach of this Code.
It is good business practice to involve a solicitor (or pertinent third party) at the outset of any transaction. The result is a business environment of full disclosure where all parties are kept fully informed of all the facts. This incidentally also protects the agent’s liability in a transaction!

In the event a consumer declines the right to use a legal adviser, it is good business practice to insert on the appointment to act or listing form “client/customer has declined appointment of a solicitor at this stage”.

An agent must respect the rights of clients and customers and provide accurate, up-to-date information so a client or consumer can make an informed decision.

This is particularly important if the client does not have access to legal representation, independent advice or information.

**Clause 31  Failure to Receive Deposit**
This clause requires an agent to immediately notify their client if a deposit is not paid within the prescribed contract time. This also applies to the special contract condition relating to the balance of deposit payment.

An agent must immediately notify their client if the deposit cheque bounces or is an amount not agreed to under the original contractual agreement.
Any variation to the way a contractually agreed deposit is to be paid to the agent must be approved by the client.

**Matters Relating to Tenancies**
The Code of Conduct enforces best practice procedures for agents who let and manage properties.

Some of these procedures are already set out in the *Residential Tenancies Act 1994*. However, they have been incorporated into the Code to increase their clarity. In particular, there are some new procedures that will have immediate impact on the way a rental agency shows properties to prospective tenants and deals with properties being let. It is important to remember however, the instructions highlighted in the Code must be observed in conjunction with other laws. For instance, inspections of a tenanted property are also subject to the agent issuing the prescribed Entry Notice with a maximum period of 24 hour’s notice in accordance with the *Residential Tenancies Act 1994*.

**Note:** Real Estate agents who charge rental or tenancy application fees may be in breach of the Act.

**Tenancy Issues Affected by the Code of Conduct**
In summary, an agent will be in breach of the Code if, contrary to the agent’s appointment authority, the agent does not:

- complete an inventory before and after a tenancy;
- immediately notify the client in writing of any breach of tenancy agreement;
- accompany prospective tenants on all property inspections (unless instructed otherwise in writing); and
• ensure agents are not to hand out keys to prospective tenants unless the tenant has taken possession of a property (unless instructed otherwise in writing by the client).

Clause 32 Inspection Report and Inventory
An agent must complete an inspection report and inventory and provide the client with a copy in accordance with the agent’s appointment authority. These reports will be completed according to the instructions given to the agent on the Appointment to Act. This clause has been drafted to clarify the ambiguity in the Residential Tenancies Act 1994 regarding who is responsible in particular for completing these reports.

Unless otherwise specified, the agent will be required to perform these tasks.

The clause also requires the agent to give the client copies of the inspection report and current inventory as soon as possible.

Clause 33 Inspection of Property for Rent
This clause has been created in response to increasing liability issues relating to unescorted inspections of rental properties. Issues of particular concern have arisen out of injuries to customers and damage and theft to properties being inspected.
The issue of handing out keys has, in particular, given rise to concern about the security of residents living in properties where keys have been previously given out to inspecting parties.

In the past, agents who handed out keys or permitted prospective customers to inspect a property unescorted have not been held legally liable for incidences that have occurred. This clause clarifies legal liability issues. It stipulates agents are not to hand out keys or permit unescorted inspections unless they have been specifically authorised to do so in writing by the client.

The provision for authorisation by the client now directs legal liability to the client.

**Note:** Agents need to be aware if they wish to continue handing out keys or permitting unescorted inspections of properties for sale and for rent, then they should seek legal advice to clarify the issue of indemnity in subsequent paperwork between the agent and the client.

Failure to have the client’s authorisation in writing will leave the agent liable in the event of any incidences to prospective customers or residents or the property in question.

**Clause 34  Maintenance or Repairs of Rental Properties**

The clause requires an agent to promptly respond to a customer’s request for maintenance or repairs to a property. This response will be subject to instructions by the client.

The incorporation of this requirement in the Code of Conduct now gives the consumer legal recourse against the agent if losses are suffered as a result of the agent’s negligence regarding repairs and maintenance. For instance, if a
tenant vacates a property as a result of the agent’s failure to respond and maintain the property in a reasonable state of repair, the client may hold the agent liable.

**Clause 35   Agent Not to Engage Unlicensed Person for Building Work**
An agent shall be in breach of the Code if they employ an unlicensed person to undertake any form of building work on a property under their management.

Agents are encouraged to become familiar with the new building licensing categories approved under the *Building Services Authority Act 1991*, and ensure all contractors are correctly licensed for the tasks they perform. Agents should also be aware certain “handyman” jobs now require a licensed contractor.

It is also good business practice to require all trades’ contractors to sign a contractor appointment form, which requires each person to nominate the licences they hold, the currency of their licences, and details of their insurance policies.

**Clause 36   Breach of Tenancy Agreement**
An agent is now required to notify a client of a breach of tenancy agreement as soon as it occurs. This clause goes beyond the *Residential Tenancies Act 1994* where an agent is only required to report a breach after the tenant has failed to remedy as a result of a notice to remedy breach.
Clause 37  Notifying Managing Agent of Appointment to Sell

and

Clause 38  Notifying Customer of Appointment to Sell

The Code requires a selling agent who lists a tenanted property for sale to immediately notify the managing agency of their appointment.

The managing agent is responsible for notifying the tenant through the required Notice of Intent to Sell (RTA Form 10).

This clause clarifies an ambiguity in the Residential Tenancies Act 1994, and places the responsibility on the Primary Agent to notify a tenant when a property under management is being placed on the market for sale.

This clause does not apply to holiday rentals.

Clause 39  Final Inspection of Rental Property

This clause requires an agent to provide a tenant with an opportunity to be present at the final inspection, and if necessary, rectify any matter that needs to be dealt with.

The Code of Conduct imposes additional requirements to supplement those of the Residential Tenancies Act 1994 regarding the agent’s conduct of final inspections, including provision for the presence of the tenant during the final inspection.

The agent’s responsibility is to take reasonable steps to ensure the final inspection is carried out in the presence of the tenant. If the tenant does not wish to be in attendance or refuses to attend, the final inspection may be carried out in the tenant’s absence.
Another exception to the provision is where the agent has a reasonable basis for concern about their personal safety in carrying out the final inspection.

The agent must be able to show the agent took reasonable steps to ensure the tenant’s presence at the inspection or had reasonable concerns about safety. In both instances above, it is advisable for the agent to document the reasonable steps taken to ensure the tenant’s presence at the final inspection, or the instances, such as threats, threatening behaviour or other behaviour by the tenant which led to a reasonable concern for the agent’s personal safety.

Division three of the Code of Conduct deals with the use, disclosure and recording of information.

**Clause 40  Confidentiality**

Confidentiality is one of the basic fiduciary duties of an agent to their client. However, it is also one of the most abused.

Confidentiality impacts directly on the price achievable on a property. This is now apparent where the majority of financial institutions will no longer disclose if a sale is “under instructions” or a “mortgagee in possession”.

Advertising headlines such as “Wife leaves – Husband says sell!” and “We’re Desperate!” have a detrimental impact on the selling or rental price of a property.
Agents should have provision on their listing documentation for “reason for sale”.

There should also be provision for whether this information is to remain confidential or whether it can be passed onto customers of the agency. These instructions should be signed-off by the client and must be strictly adhered to.

All advertising and promotional copy should also be shown to the client and signed-off by the client before publication.

Likewise photographs of a property, particularly internal photos, should not be displayed or privately passed on to customers until the client has authorised their use. This is particularly important with internet use.

**Post-appointment Confidentiality**

Clause 40 also applies to the general use of confidential information obtained whilst the agent was appointed by the client. If an agent uses confidential information for any purpose other than the purpose for which they were appointed, it may be an offence.

For instance, an agent uses confidential information about a former client to gain an advantage for a current client in a commercial business transaction.

**Confidentiality and Searches**

Agents should be careful about handing out information obtained from searches. Although most members of the public can directly access property ownership information, new privacy legislation now exists, and agents should not pass on or show searches to customers.
This is especially relevant regarding ownership details and the previous purchase price. Instead, information from searches should be analysed, interpreted and compiled into a research document such as a Competitive Market Analysis that can then be handed out to customers.

**Certain Confidential Information must be Revealed**

Clause 40 also requires certain confidential information must be revealed to customers to protect the client’s legal obligations in a transaction. For instance, if certain confidential information is of relevance to a customer, it must be revealed.

Most common situations include structural problems and cover-ups in a building, flooding, and matters relating to the immediate environment (eg whether the neighbours are owners or tenants, phone towers to be erected, road widening, etc). Other areas of particular importance involve confidential information relating to cultural issues. For instance, in certain Asian cultures, it is essential to reveal if a death has occurred on a property.

The most difficult situation for an agent is when they are asked a question such as “why is the owner selling?” or “how long has this property been on the market?”

It is important the agent answers these questions truthfully and does not mislead a customer. At the same time,
the client’s rights to confidentiality must be protected to the best of the agent’s ability.

**Clause 41  Recording of Information**
The Code requires an agent who is making information that may be detrimental to the customer available for any form of public document (such as a credit-rating database or a public tenancy register), to make every attempt to inform the subject parties of their actions. This includes the nature of the entry and how it will be used.

The agent must also ensure the information is accurate and current and provide an opportunity for the customer to review the information.

**Clause 42  Publicising Code**
All real estate agencies must display a notice in a prominent position publicising the existence of the Code. Agents must also be in a position to direct a consumer to how they can secure a copy of the Code.

Good business practice would be to have a copy of the Code on display in an office. Agents should also promote the Code in listing presentation material and have copies of the Code available to all consumers of their services.

**Clause 43  Principal Licensee to Have Complaint Handling Procedure**
A major addition to the Code of Conduct is the mandatory requirement for every licensee to implement a procedure for handling complaints within their business.
The Code is specific in its requirements. Not only should a system be established, it must be practical in application and readily accessible by consumers.

This process applies only to complaints made by current, past or prospective tenants, buyers, landlords and sellers of the agency if they have a complaint about an agency matter. It does not apply to matters arising out of the Residential Tenancies Act 1994.

The Code requires a licensee to ensure there is:

• a procedures policy in place for managing complaints;
• written information freely available to consumers outlining what those procedures are. This includes:
  ◆ how a complaint should be lodged with the agency (verbally or in writing); and
  ◆ who the complaint should be lodged with; and
• a provision for a complaint to be investigated and a response delivered within 7 days.

The licensee and their employees will also have to define which complaints come under Residential Tenancies Dispute Resolution Services and which ones must be handled according to the guidelines established in the Code of Conduct.
Note: The inclusion of tenancy issues in the Code of Conduct will dictate that some issues such as inventories, inspection reports etc may now be mediated under the Property Agents and Motor Dealers legislation.

Responding to a Complaint
The Code stipulates an agent can respond in two ways to a complaint:

• reject the complaint (in part or wholly) within 7 days giving reasons for the rejection; or
• accept the complaint and rectify/make restitution within 7 days or an agreed time period.

Note: There will be occasions when an agent will not be in a position to reject or accept the complaint within 7 days. Under these circumstances the agent would still be required to respond within 7 days stating they are awaiting a response from a third party.

Procedures for Rejecting a Complaint
If the agent rejects a complaint there are certain procedures that must be followed:

• provide a written notice of rejection;
• outline reasons for rejection in the notice;
• provide a separate document setting out other avenues of voluntary dispute resolution (such as mediation through the Queensland Department of Justice’s and Attorney-General’s Dispute Resolution Service or Small Claims Tribunal);
• warn the consumer of any relevant time restraints on a complaint (this would include relevant statutes of limitations applying to the matter in dispute);
• inform the consumer they may wish to seek legal advice;
• inform the consumer they may commence action against the agent in the Small Claims Tribunal or a Court; and
• inform the consumer they can make a formal complaint to the Office of Fair Trading which may result in an investigation and proceedings against the agent.

Complaint Management Systems
The introduction of a formal complaint process will require a great deal of reorganisation in the traditional real estate business environment. Here are a few tips to help:

1. Appoint a person to be in charge of complaints
   A licensee will need to appoint a person within the office to be responsible for receiving and dealing with complaints and correctly managing dispute mediation and arbitration.
   The person responsible for dispute resolution should receive appropriate training in complaint handling, mediation and communication skills.

2. Instigate a system to record, track and monitor complaints
   A system to formally and immediately log a complaint’s receipt and progress (ie referral to a third party) will be required.
A real estate office will need a complaints register in duplicate. Each complaint entry will need a reference number and a file opened dealing with particular matter. The agency will also need a system to track the progress of each complaint until it is resolved. If the complaint relates to the activities, services or representations involving the agency or employees of the agency, the agency must adopt proceedings according to the Code.

3. Dealing with complaints involving third parties
If the complaint involves the activities of a third party to whom the agent is representing or contracting business, it would be wise for the agent to log the complaint and then refer it to the relevant party for action. The agent must still respond within 7 days notifying the complainant of their actions.

The agent should seek independent legal advice regarding the degree of involvement they should have in such a matter. They should also seek advice on whether they can charge a client additional fees and recover expenses for processing the complaint on behalf of a third party.

Ideally, you should consult with an expert in conflict resolution and have a system designed for your business that complies with the Code.

Clause 44  Client to be Notified of Complaint and Outcome
If a complaint is made by a customer of an agency and involves a transaction, the agent must notify the relevant client a complaint exists and keep them informed of proceedings.
Clause 45  Compliance with Outcome of Dispute

An agent must comply with the decisions of an appointed independent mediator, arbiter, or court as a result of the prescribed dispute resolution process. This compliance is subject to any stay of court such as an injunction or an order for specific performance.

Real estate agents are responsible for establishing and maintaining an effective complaint handling and dispute resolution process.

There are independent complaint handling and dispute resolution processes which an agent can access or contract. However, ultimately the onus remains with the agent to ensure complaint handling and dispute resolution processes operate effectively.
Be Scam Smart

Invoice fraud is a growing and expensive problem for Queensland businesses. Professional scammers use the telephone, mail and email, to trick businesses into advertising in bogus publications or directories. The caller, or notice, is convincing and high pressure tactics are often used.

Lessen your exposure to fraud by:

• being alert to phone, email or mail solicitations;
• keeping good accounting records:
  – preferably use a computerised accounting system;
  – routinely enter invoices before payment;
  – allow time to check invoices thoroughly; and
  – don’t rush payment through. Pay on a regular basis;
• restricting the number of staff with access to bank account or credit card details;
• setting an advertising budget and sticking to it;
• doing business with those you know and trust:
  – don’t be pressured into advertising with a company whose product you haven’t seen; and
  – be wary of bills from traders you are unfamiliar with – check their background;
• understanding the terms of the agreement;
• regularly checking with your business association or the Office of Fair Trading for current scam alerts;
• spreading the word about consumer fraud to other businesses and associations;
• reporting scams or attempted scams to the Office of Fair Trading; and
• putting in place clear and written policies regarding:
  – who is authorised to order goods and services;
  – who is delegated to pay bills;
  – when bills are to be paid; and
  – who should check and authorise payments (where possible, require double authorisation of all payments).

Guidelines for Bill Payers

Look out for fraud – be wary when:

• sellers demand quick payment;
• the caller refuses, or delays sending, you information;
• you’re told that someone else in your office has approved it; or
• you cannot recall dealing with the caller before, yet they insist you have.

Check all invoices and purchases carefully. Don’t:

• pay unless you have issued an order number and match all invoices to orders or only pay a deposit; and
• approve purchases over the phone – get it in writing first.

Other Common Scams

• fax-back scams – asks you to fax to a number where you are then charged a high fee for the use of the fax service listed;
• pyramid selling/chain letter/email scams – involves promises of money for every person you sign up, asks for a fee from each person who receives
them, or requests your bank account details. These schemes are illegal in Queensland;

- **competition/phoney lottery scams** – asking for a fee to be paid to find out if you have won something when there is no prize;
- **traders who move from place to place** – offer to do work, but they ask for your money first and then change their promise and/or perform poor quality work;
- **door-to-door sales schemes** – people who pressure you to buy products you haven’t seen;
- **bogus charity collectors** – people who pretend to work for a charity they don’t;
- **online scams** – tricks you into giving out your credit card or bank account as well as other personal details on the internet, or requests money for a service you may not need such as an internet domain name renewal; and
- **telephone fraud** – a form of telemarketing which tries to make you pay or join up to something or give out your personal financial details.

**Making a complaint or getting information or advice**

Scams should be reported to the Office of Fair Trading on 1300 658 030. More detailed information is available online at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au). You may feel embarrassed to complain or report a scam, but you shouldn’t be. By reporting the scam to your nearest Office of Fair Trading, you will receive professional advice on possible redress options. You will also help to protect other businesses.
Relevant Legislation

• Property Agents and Motor Dealers Act 2000
• Property Agents and Motor Dealers (Motor Dealing Practice Code of Conduct) Regulation 2001
• Fair Trading Act 1989.

Copies of the above are available free of charge on www.fairtrading.qld.gov.au or purchased from Goprint Bookshops on 3246 3399 or 1800 679 778.

Other Related Information

The following are available on www.fairtrading.qld.gov.au or 1300 658 030.

• Restricted Letting Agents Good Business Guide.
• Property Development Sales Practice Good Business Guide.
Contacts
Office of Fair Trading, Department of Tourism, Fair Trading and Wine Industry Development
www.fairtrading.qld.gov.au

Contact your nearest Office of Fair Trading (cost of a local call or 1300 658 030. If calling from a mobile – 3246 1500.

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Cnr Stanley & Walker Street, Townsville
PO Box 2009, Townsville QLD 4810
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Ground Floor, Brendan Hansen Building,
54 Main Street, Pialba QLD 4655
PO Box 3408, Hervey Bay QLD 4655
Facsimile: (07) 4197 9805

Department of Justice and Attorney General – Dispute Resolution Services
Ph: 3239 6269 or 1800 017 288

Department of Local Government and Planning
Ph: 3234 1870
www.dlgp.qld.gov.au

Department of Natural Resources and Mines
Ph: 3896 3111
www.nrm.qld.gov.au

• SmartMap
Ph: 3896 3216
www.nrme.qld.gov.au/property/mapping

• Land registry
Ph: 3405 6900
www.nrme.qld.gov.au/property/titles
Department of State Development and Innovation
Ph: 13 26 50
www.sdi.qld.gov.au

Australian Property Institute – Queensland Division
Ph: 3832 3139
www.propertyinstitute.com.au

Australian Securities and Investment Commission (ASIC)
Ph: 1300 300 630

Body Corporate Community Management
Ph: 1800 060 119

Building Services Authority
Ph: 3225 2800
www.bsa.qld.gov.au

Commercial and Consumer Tribunal
Ph: 3247 3333
www.tribunals.qld.gov.au

Electrical Safety Office
Ph: 3237 0220
www.eso.qld.gov.au

Housing Industry Association Ltd
Ph: 1902 973 555
www.hia.asn.au

Masters Builders Association
Ph: 1800 805 941
www.qmba.com.au

National Association of Exclusive Buyer Agents
Ph: 1300 138 137

National Training Information Service database
www.ntis.gov.au

Property Buyers Agents Association of Australia
Ph: (02) 9904 3444
www.pbaaa.com.au

Property Sales Association of Queensland
Ph: 3841 6977
www.psaq.org.au
Queensland Resident Accommodation Managers’ Association (QRAMA)
Ph: 3257 3927
www.qrama.com.au

Real Estate Institute of Queensland (REIQ)
Ph: 3891 5711
www.reiq.com.au

Residential Tenancy Authority
Ph: 1300 366 311
www.rta.qld.gov.au

Valuers Registration Board
Ph: 3221 3892
www.valuersboard.qld.gov.au

Urban Development Institute of Australia (UDIA)
Ph: 3229 1589
www.udiaqld.com.au
Glossary of Terms

Chief Executive (OFT) – Chief Executive Department of Tourism, Racing and Fair Trading, Office of Fair Trading.

Claim Fund – the Claim Fund for consumers which can compensate consumers who have suffered loss as a result of actions of licensees or their registered employees (replaced the Auctioneers and Agents Fidelity Fund).

Cooling-off period – the five business day period applying to sales of residential property (excluding auction sales) during which the buyer may terminate the contract.

Employment Register – a hard copy or electronic register of all non-clerical people employed by a licensee.


Warning Statement – the first page of all residential sales contracts (excluding auction sales) must have a Warning Statement as its top page. It is a disclosure made by the seller to the buyer and must be in the approved form.
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- Limitations on Storage of Information
The Real Estate Agency and Sales Practice guide is designed to assist real estate agents to meet the requirements of the Property Agents and Motor Dealers Act 2000.

This guide contains information that will assist agents ensure their business practices comply with the legislative requirements. It is written in plain English that is practical and offers clear guidance.

www.fairtrading.qld.gov.au
1300 658 030

August 2004
DISCRIMINATION
IN ACCOMMODATION
IN ACCOMMODATION

The Queensland Anti-Discrimination Act 1991 (the Act) promotes fair treatment and equality of opportunity by protecting everyone from unfair discrimination, sexual harassment and vilification in accommodation. This booklet has been designed to assist those involved in the accommodation and property sector to understand Queensland anti-discrimination law and to answer the most commonly asked questions.

WHAT IS DISCRIMINATION?

Discrimination occurs when someone is treated unfairly or badly in certain respects. Not all discrimination is against the law, even if it is unfair. In Queensland the Anti-Discrimination Act determines what kind of discrimination is unlawful by identifying particular attributes and areas (see below).

Discrimination happens because people have stereotypical or prejudiced ideas or beliefs about other people because they happen to belong to a particular group of people or because they have certain personal characteristics or attributes. This kind of direct discrimination is often the result of failing to treat each person as an individual regardless of their sex, age, race etc.

Discrimination can also happen in a more indirect way. In some cases treating everybody the same can be unfair because it disadvantages a whole group of people. For example, requiring all new tenants to have been in the workforce for at least five years would disadvantage young people who may have little chance of complying. Unless such a rule is necessary or reasonable in all the relevant circumstances it will be indirect discrimination and against the law. Indirect discrimination is not usually intentional but is often the result of failing to think about the impact of rules and requirements on different people.

The Anti-Discrimination Act 1991 says that it is against the law to discriminate against people because of their:

- family responsibilities
- sexuality
- gender identity
- sex (whether they are female or male)
- relationship or parental status (whether they are married, single, widowed, divorced, separated or living with someone as if they were married (de facto, including same sex de facto), and whether they have children or not)
- race
- age (whether they are young or old)
- impairment (whether they have or have had a physical, intellectual, psychiatric or mental disability, injury or illness, including whether they are HIV+, or use a guide dog, wheelchair or some other remedial device)
- religious belief or activity
- political belief or activity
- trade union activity
- lawful sexual activity (a lawfully employed sex worker)
- pregnancy or breastfeeding
- association with or relation to someone who has any of these listed attributes or personal characteristics

For more information about different kinds of discrimination refer to the Commission’s series of specific discrimination information brochures.

Margaret, a single parent with two young children, applied to rent a unit. The real estate agent told her she would have to pay extra rent because of her children. This is direct discrimination on the basis of parental status and is unlawful.
WHAT IS SEXUAL HARASSMENT?

Sexual harassment is any form of unwanted, unwelcome or uninvited sexual behaviour which is or might be offensive, humiliating or intimidating. It can include an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature. Where sexual interaction is invited, mutual, consensual or reciprocated it is not sexual harassment.

The law further defines sexual harassment as unwelcome sexual conduct that a ‘reasonable person’ might anticipate would offend, humiliate or intimidate. When applying the ‘reasonable person’ test to sexual harassment, the particular circumstances of the case will be taken into account. These might include the age, race or impairment etc of the person being harassed, and the relationship between the people involved (e.g. manager and trainee).

*Sexual harassment can take various forms and may be obvious or indirect, physical or verbal. It also includes behaviour and practices which create a sexually hostile or intimidating environment. Specifically, examples of sexual harassment include:*

- unwelcome physical touching
- sexual or suggestive comments, jokes or innuendo
- unwelcome requests for sex
- intrusive questions about a person’s private life
- the display of sexually explicit material such as posters or pictures
- unwanted invitations
- staring or leering
- sex based insults or taunts
- offensive communications, including telephone calls, letters, faxes, E-mail and computer screen savers

Sexual harassment does not have to be repeated or continuous to be against the law. Some actions or remarks are so offensive that they constitute sexual harassment in themselves, even if they are not repeated. Other single incidents, such as an unwanted invitation or compliment, may not be harassment if they are not repeated. Some forms of sexual harassment, such as assault, physical molestation, stalking, sexual assault and indecent exposure, are also criminal offences. More detailed information about sexual harassment can be found in the Commission’s sexual harassment information brochure.

WHAT IS VILIFICATION?

Vilification (inciting hatred, serious contempt or severe ridicule of others because of their race, religion, gender identity or sexuality) can take many forms, including hate-speech, graffiti, websites and the distribution of propaganda or other forms of offensive literature. Vilification is generally behaviour that happens in a public place and incites others to hate, to have serious contempt for or to severely ridicule individuals or groups because of their race or religion.

It is also a criminal offence to incite hatred of others by threatening physical harm or inciting others to threaten physical harm towards another or their property.

WHEN IS DISCRIMINATION UNLAWFUL?

Not all discrimination is against the law. The legislation is very specific. The Act says that it is against the law to discriminate against people in particular circumstances, including when they:

- apply for a job or try to get into a course
- work, whether it be full-time, part-time, casual, temporary or voluntary

CASE STUDIES

Pat lived in a boarding house that provided shared bathroom facilities for all residents. The lock on the door to the bathroom was broken and Pat complained to the manager of being stared at and sexually propositioned by other residents when using the facilities. After Pat complained she saw the manager pinning up sexually explicit materials in the bathroom and adding insulting comments about Pat’s appearance to them. Pat could complain about sexual harassment.
In a case that was heard in the Anti-Discrimination Tribunal, an Aboriginal woman was refused rental accommodation because of her race \((\text{Lynton v Maugeri} (1995) \text{EOC 92-754)}\). When the woman arrived to inspect a house she was told it had already been rented to another person. A relative of the woman phoned the lessor and was told the house was still available for rent. The person asked why her relative had earlier been told the house had already been rented out. The daughter of the owners told them “My parent's wouldn't rent the house to black people”. The Tribunal awarded Ms Lynton compensation of $18,000.

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agents and property owners therefore have the right to select a tenant primarily on the basis of the tenant’s ability to fulfil basic tenancy responsibilities such as paying the rent on time and maintaining the premises.

Real estate and property agents need to be aware that if they act on unlawful discriminatory instructions given by a property owner, eg. directions to refuse to rent a flat to gay men or lesbians, both the agent and the owner may be legally liable for such discrimination.

Real estate agents and property agents also have a responsibility to take reasonable steps to prevent or minimise unlawful discrimination, sexual harassment and vilification in the accommodation and property sales sector. The implementation of specific policies can help to minimise the scope and impact of discriminatory attitudes and practices in accommodation and to reduce legal liability.

As an employer, accommodation providers are entitled to formally counsel any employee who might be engaging in discriminatory conduct while at work.

**What are my rights and responsibilities as an accommodation user?**

Everyone has the right to be free from discrimination, sexual harassment and vilification in accommodation services and facilities. If a person believes that they have been discriminated against, sexually harassed or subjected to vilification in relation to accommodation they have the right to make a complaint to the Commission and seek a solution through conciliation.

Tenants are entitled to rent any property provided they can pay the rent and maintain the premises, or to sublet the premises on the same terms and conditions as apply to all other tenants.

**WHAT ARE SOME COMMON QUESTIONS ABOUT ANTI-DISCRIMINATION LAW AND RENTAL ACCOMMODATION?**

Anti-discrimination law makes it unlawful to discriminate in the rental property market. This means that it is against the law to treat people differently because of personal characteristics or attributes, eg. sex, race etc. Answers to some of the most common questions about rental tenancy and anti-discrimination law are outlined below.

**Can tenants be evicted?**

Yes. Real estate and property agents and lessors have the right to give notice of alleged breaches of a tenancy agreement and terminate a tenancy agreement if necessary. Tenants cannot be evicted or otherwise penalised for discriminatory reasons, eg. because a couple become parents during the term of the tenancy.

**What about accommodation advertisements?**

The legislation imposes a legal responsibility on real estate and property agents and lessors to ensure that accommodation advertisements do not appear to be discriminatory. The easiest way to do this is to encourage all tenants to apply by describing the property rather than the tenant wanted, eg. “one bedroom flat” instead of “suit couple or bachelor”, and “four bedroom house” instead of “suit family”. However, advertisements can specify that references are required and that pets are not allowed (guide dogs are not pets). These conditions do not apply to advertisements for shared private accommodation.

**Can references be asked for?**

Yes. References can be requested provided all prospective tenants are asked for them and the request does not result in unfair indirect discrimination, eg. newly arrived migrants, young people and first-time tenants might have difficulty supplying accommodation references but could provide a personal reference instead.

**What personal details can be asked for?**

Asking for proof of a tenant’s identity and ability to pay the rent and maintain the property is permitted by the legislation. However, real estate agents, property agents and other providers of accommodation services and facilities also have a legal responsibility to avoid asking for unnecessary discriminatory information in tenancy application forms and tenant interviews. Generally it will be against the law to ask questions on application forms and in interviews about a person’s marital status, sex, age, number of children (if any), plans to have children, race or nationality, sexual preference,
health condition or medical history, religious or political beliefs. To avoid complaints of discrimination it is desirable to inform tenants why they have not been successful in their application for accommodation.

How much can be charged for bonds and rent?
Charging higher bonds or rent because of discrimination is against the law. For example, tenants cannot be charged higher rent just because they have children, or be required to pay a larger bond because they are young. Unless there are adequate reasons for differentiation, such as higher rent for short-term holiday accommodation, it would be unlawful discrimination.

Can special tenancy terms and conditions be imposed?
Yes. Entering the premises as allowed by the tenancy agreement or tenancy laws is permissible, as is the application of special terms and conditions for all tenants, eg. banning pets (guide dogs are not pets). In general, unless good reasons can be argued, the same rules and conditions should be applied to all tenants in order to avoid unlawful discrimination. For example, carrying out more frequent inspections just because the tenants are young, or are Aboriginal, would be unlawful discrimination.

What about tenants with impairments?
A person who has an impairment has the right to enter into a tenancy agreement without being discriminated against because of their impairment. Specifically, a tenant with an impairment has the right to make reasonable alterations to the property in order to meet their needs. This can only be done if the alterations do not affect the structure of the premises or other premises, the tenant agrees to remove any alterations when they move out, and the tenant pays for the installation and removal of the alterations. Property agents and owners have the right to demand that any alterations made to the premises be removed at the expense of the tenant when they leave.

Tenants who have a guide dog because of their visual, hearing or mobility impairment cannot be asked to keep the dog elsewhere or to pay extra if the dog lives at the accommodation. It is also an offence punishable by a fine for someone to separate a person from their guide dog. However, if the dog causes damage to the premises the tenant will still be liable.

ARE THERE ANY EXEMPTIONS?
Particular exemptions mean that not all forms of discrimination are against the law in all circumstances. The Act provides a range of exemptions that can be argued.

It is also possible to apply to the Anti-Discrimination Tribunal for the granting of an exemption. However, only certain exemptions apply in relation to accommodation.

Exemptions recognise that in some circumstances discrimination can be acceptable provided it occurs for specific reasons or purposes. Whether a particular exemption will apply will usually be a question of fact which only the Tribunal can decide. However, any possible exemption should be raised with the Commission as this may assist in conciliating a resolution of a complaint.

Welfare and equal opportunity measures
‘Special measures’ provisions are designed to benefit or promote equal opportunity for a member of a disadvantaged group or a person with particular needs. This can include the provision of special accommodation for women experiencing domestic violence, or to frail, older people or young people.

Shared accommodation
People can choose whoever they like to share their private homes provided that there are no more than three tenants besides themselves and their family. Anti-discrimination laws apply if there are more than three tenants involved. This means that a tenant wishing to have another tenant share with them may legally specify preference for people of a particular sex, age, religion, parental status etc.

Charities
Charitable organisations may discriminate on the basis of sex, relationship status or age in the provision of accommodation in order to fulfil their charitable purposes.
CASE STUDIES

Jim and Linda rented a permanent caravan. When Linda’s pregnancy became noticeable the caravan park manager gave them an eviction notice, saying that he didn’t “want any more kids running around the park”. Jim and Linda complained to the Commission about discrimination on the basis of pregnancy. The caravan park manager was personally liable for the discrimination and agreed to apologise and pay compensation. The company that managed the caravan park was also vicariously liable for the discrimination since it had not taken any reasonable steps to minimise or prevent discrimination on the basis of pregnancy. As part of the settlement the park manager agreed to implement appropriate anti-discrimination guidelines for the caravan park and to provide training to all staff.

Educational Institutions

Sex, religion and impairment specific educational institutions can lawfully provide accommodation for students of the particular sex or religion or for those with a specific impairment or impairments in general.

Supplying special services or facilities

An exemption may apply where supplying special services or facilities for people with an impairment imposes an unjustifiable hardship on accommodation providers. Factors that are relevant include the cost of supplying the special service or facility, the number of people to benefit, the financial circumstances of the person required to provide them, and any human and other costs that may disadvantage others.

Religious organisations

Accommodation services run by religious organisations may discriminate when it is necessary to do so in order to comply with religious doctrine and to avoid offending religious sensitivities.

Live in positions

Live-in jobs where sleeping accommodation is provided for one sex only and the supply of separate sleeping accommodation for each sex would impose unjustifiable hardship on the employer, is permitted. Different standards of accommodation may also be provided for different workers where it is not reasonable to expect the same standard for all workers and where the standard can be determined according to the size of the worker’s family or household, the kind of work performed, or the nature of the position held by the worker.

WHO IS LEGALLY LIABLE?

Anyone who unfairly discriminates against another person, sexually harasses or vilifies them can be complained about and may be liable under the law. The law also allows for accommodation providers and their employees or agents to be liable for discrimination, sexual harassment and vilification that occurs in accommodation.

What is vicarious liability?

Accommodation providers and real estate and property agents can be liable for discrimination, harassment, vilification done by their agents or employees because they are obliged by law to protect staff and clients from such behaviour. Complaints can therefore be made against individuals, employers and organisations. Previous cases show employees have been found jointly liable at law with the organisation, including the payment of compensation. In practice, vicarious liability means that a complaint against an individual may also be sent to their employer.

An organisation may be liable if a person could be seen as representing the organisation or as acting on behalf of the organisation. Regardless of whether they are on contract or an employee, a person might be considered to be an agent of the organisation. The easiest way to work out if someone can be considered an agent is to think about whether others might see a connection or relationship between the two.

Vicarious liability in the accommodation sector also applies to relationships between employees and employers of accommodation services as well as to property owners and their agents. For example, a real estate agent may be liable for the
discriminatory actions of a staff member, and a property owner may be liable for the discriminatory actions of a real estate agent.

An employer or organisation cannot avoid vicarious liability simply because they were not aware of the unlawful discrimination, sexual harassment or acts of vilification done by their employees or agents. A real estate agent also cannot avoid liability if they carry out the discriminatory instructions of a property owner.

**WHAT CAN I DO ABOUT LIABILITY?**

Risk management needs to take the requirements of anti-discrimination law into account. Real estate agents and other property management businesses may argue and a defence to vicarious liability if they can show that reasonable steps were taken to prevent discrimination, sexual harassment or vilification. Although this will vary, generally reasonable steps should include:

- development of anti-discrimination and sexual harassment policies
- education and training of staff (especially managers and supervisors)
- establishment of appropriate grievance and complaints procedures
- removal of any discriminatory or offensive materials, rules and practices

Recent rulings and case outcomes in Queensland, other states and at the federal level have shown that an employer’s or organisation’s obligation does not just involve the introduction of appropriate policies, but also entails ensuring that such policies are positively and actively implemented.

**WHAT IS VICTIMISATION?**

Tenants, agents, property owners and agencies need to be aware that the Act also prohibits *victimisation*. Victimisation happens when a person who has either made a complaint or intends to make a complaint to the Commission, is threatened or harassed by others involved in the complaint. This is a serious matter and penalties can be imposed on those responsible for victimisation.

**WHAT ELSE DO I NEED TO KNOW?**

The Commission can provide more detailed information about the legislation, the complaint process, exemptions, liability, victimisation and rights and responsibilities in relation to unlawful discrimination, sexual harassment and vilification. A number of specific brochures, library resources and education and training services are also available. Please contact the Commission for information, assistance and advice.

Fatima and Ali were told by a real estate agent that a rental property was no longer available but it was advertised again the next day. When they contacted the agent again they were told the same thing. The real estate agent also told Fatima and Ali that there was nothing suitable for ‘people like you’ and they shouldn’t bother coming again. Fatima and Ali were hurt and distressed by the rude and abrupt treatment they experienced from the real estate agent and complained to the Commission of racial discrimination. When the real estate agent became aware of their complaint he began to subject Fatima and Ali to abusive phone calls and threats about their chances of finding anyone to help them. The agent also embarked on a campaign to encourage other real estate agencies to ‘boycott’ them. Fatima and Ali also made a complaint of victimisation to the Commission.
### Allowing time when serving notices

The Residential Tenancies and Rooming Accommodation Act 2008 (the Act) sets clear time lines for serving notices. In some instances the Act states the amount of time a notice must be given before any action is taken. In others, the Act sets limits on the amount of time in which an action must occur. To ensure your rights are protected, it is important to follow the set notice periods. This fact sheet relates to fixed term and periodic agreements in general tenancies, such as houses or units. For notice periods relating to tenancies in caravans and other moveable dwellings, refer to the Allowing time when serving notices – Moveable dwellings fact sheet.

<table>
<thead>
<tr>
<th>Notices</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of rent increase</td>
<td>Lessor/agent must give at least two months for both periodic and fixed term tenancies. Rent can only be increased in a fixed tenancy if the tenancy agreement allows.</td>
</tr>
<tr>
<td>Application to Tribunal to review rent increase</td>
<td>Tenant to make application within 30 days after the notice of rent increase has been received.</td>
</tr>
<tr>
<td>Notice to Remedy Breach (Form 11) for general breaches of the agreement</td>
<td>Notice must give at least seven days to remedy breach.</td>
</tr>
<tr>
<td>Notice to Remedy Breach (Form 11) for rent arrears</td>
<td>Rent must be unpaid for at least seven days before a lessor/agent can give a Notice to Remedy Breach (Form 11) to the tenant. The tenant is then allowed at least seven days to remedy the breach.</td>
</tr>
<tr>
<td>Notice of damage</td>
<td>Tenant to advise lessor/agent as soon as tenant becomes aware of damage.</td>
</tr>
<tr>
<td>Notice of bond increase (notice can only be given by lessor at least 11 months after previous notice for bond increase). Total bond must not exceed maximum amount under the Act</td>
<td>At least one month.</td>
</tr>
<tr>
<td>Notice to RTA's Dispute Resolution Service about a bond dispute after receiving a Notice of Claim for bond from RTA</td>
<td>Notice to the RTA must be given within 14 days after service of Notice of Claim by RTA (Note that 14 days is counted from time after service of notice by RTA, and not from time of receipt of notice). The RTA includes the date in the notice that it sends out.</td>
</tr>
<tr>
<td>Advise RTA of application to the Tribunal about a bond dispute after the RTA has issued a Notice of Unresolved Dispute</td>
<td>Within seven days after service of Notice of Unresolved Dispute by the RTA.</td>
</tr>
<tr>
<td>Notice of entry for</td>
<td>Notice lessor/agent must give</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------</td>
</tr>
<tr>
<td>General inspections (must not be more than once every three months unless otherwise agreed)</td>
<td>At least seven days.</td>
</tr>
<tr>
<td>Routine repairs</td>
<td>At least 24 hours except in remote areas with a shortage of trades people.</td>
</tr>
<tr>
<td>Checking repairs have been completed. Entry is limited to within two weeks of the repair being undertaken</td>
<td>At least 24 hours.</td>
</tr>
<tr>
<td>Checking the tenant has fixed a significant breach after being given a Notice to Remedy Breach (Form 11). Entry is limited to within two weeks of the expiry of the Form 11</td>
<td>At least 24 hours.</td>
</tr>
<tr>
<td>Complying with smoke alarm laws</td>
<td>At least 24 hours.</td>
</tr>
<tr>
<td>Complying with safety switch laws</td>
<td>At least 24 hours.</td>
</tr>
<tr>
<td>Repairs where the premises is remote and there is a shortage of qualified repairers</td>
<td>None.</td>
</tr>
<tr>
<td>Showing a prospective tenant or purchaser the premises</td>
<td>At least 24 hours (a Notice of Lessor’s Intention to Sell Premises (Form 10) must also be given if premises is for sale.</td>
</tr>
<tr>
<td>Valuation</td>
<td>At least 24 hours.</td>
</tr>
<tr>
<td>Suspension of abandonment</td>
<td>At least 24 hours.</td>
</tr>
</tbody>
</table>

**Notices for Ending a Tenancy**

To end the tenancy the lessor/agent must give the tenant a Notice to Leave (Form 12) with the appropriate notice.

<table>
<thead>
<tr>
<th>Reason for ending tenancy – lessor/agent</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unremedied rent arrears</td>
<td>At least seven days (after expiry of Notice to Remedy Breach (Form 11) for rent arrears).</td>
</tr>
<tr>
<td>Unremedied general breach (breaches of the Act apart from rent arrears)</td>
<td>At least 14 days (after expiry of Notice to Remedy Breach (Form 11)).</td>
</tr>
<tr>
<td>Non-compliance with a Tribunal order</td>
<td>At least seven days.</td>
</tr>
<tr>
<td>Compulsory acquisition (the notice must be given within one month after the compulsory acquisition)</td>
<td>At least two months.</td>
</tr>
<tr>
<td>Premises sold</td>
<td>For periodic agreements only – at least four weeks.</td>
</tr>
<tr>
<td>Non-livability (the notice must be given within one month of the event causing the non-livability)</td>
<td>The same day the notice is given.</td>
</tr>
<tr>
<td>Abandonment</td>
<td>If the tenant does not respond to an Abandonment Termination Notice (Form 15) within seven days, tenant is taken to have abandoned the premises. Tenant may dispute the notice by applying to the Tribunal within 28 days of the notice being served.</td>
</tr>
<tr>
<td>Ending of employment-related tenancy agreement</td>
<td>At least four weeks, unless an award or employment contract states otherwise.</td>
</tr>
<tr>
<td>End of supported accommodation assistance</td>
<td>At least four weeks.</td>
</tr>
</tbody>
</table>
End of entitlement to housing assistance (public housing or community housing) | At least two months.
---|---
Without grounds | For periodic agreements – at least two months notice. For fixed term agreements – at least two months or the end of the fixed term, whichever is the later in time.

To end the tenancy, the tenant must give the lessor/agent a *Notice of Intention to Leave* (Form 13). The time periods which a tenant must allow in a *Notice of Intention to Leave* are the same as for the lessor/agent except in the cases listed below.

<table>
<thead>
<tr>
<th>Reason for ending tenancy – tenant</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unremedied breach</td>
<td>seven days.</td>
</tr>
<tr>
<td>Compulsory acquisition</td>
<td>two weeks.</td>
</tr>
<tr>
<td>Without grounds</td>
<td>For periodic agreements only – two weeks. For fixed term agreements – 14 days or the end of the fixed term, whichever is the later in time.</td>
</tr>
</tbody>
</table>

### Counting days in notice periods

The *Acts Interpretation Act 1954* provides direction on how to interpret time periods in the *Residential Tenancies and Rooming Accommodation Act 2008*.

Time periods for serving notices are expressed as clear days between the day of serving the notice and the day for taking the next action. This means that when you calculate the dates on the notices to allow the correct time, you must not count the day the notice is served at the address and you must not take the next action until the day after the last day.

**Example:** If you hand deliver a seven day notice on the 12th of June, you may start counting the seven days from the 13th of June. The seventh day is the 19th of June, so the next action may be taken on the 20th of June.

The *Acts Interpretation Act 1954* states that a notice expires at midnight, so you must allow the person the entire 24 hours of the last day of the notice before you can take the next action.

**Example:** If the last day of a *Notice to Leave* is the 19th of June, by law the tenant must be allowed until midnight on that date to leave.

It is clearly impractical to conduct a handover of keys and inspection at midnight on the 19th of June, so parties are encouraged to make an agreement about when this may occur.

**Example:** Parties may agree to vacation of the premises and handover by close of business on the 19th of June or 9am on the 20th of June rather than at midnight.

### Counting months in notice periods

When the Act refers to a month, it means a calendar month. A ‘calendar month’ means a period starting at the beginning of any day of a month and ending immediately before the beginning of the corresponding day of the next month; or if there is no such corresponding day, at the end of the next month.

Just like when counting days in notice periods, when you count months you must not count the day the notice is served, and you must not take the next action until the day after the last day.

**Example one:** Two months notice is given on the 20th of December, so counting of the two months begins on the 21st. The two month period ends immediately before midnight on the 20th of February, so action may be taken on the 21st of February.

**Example two:** Two months notice is given on the 30th of December, so counting of the two months begins on the 31st. Since there is no 30th of February, the two months is considered to end immediately before midnight on the 28th of February. Action may commence on the 1st of March.
Counting hours in notice periods
When the notice period is 24 hours, such as in some grounds for entry to premises, a minimum of 24 hours must be allowed from the time the notice is served at the premises until the next action, such as the entry.

This can be calculated to the hour when a notice is served in person. Where service of the notice is by post, the 24 hour period starts from the time the post arrives at the premises.

Serving a notice
A notice can be given by delivering it to the recipient at the address of the place or business last known to the person serving the notice. Ways of delivering notices include by hand (personally), post, email (if allowed under the agreement) or fax. The rules for serving notices are outlined in the Acts Interpretation Act 1954 and the Electronic Transactions (Queensland) Act 2001.

The method used to serve a notice which has a longer time period might not be appropriate for a notice with short time periods, such as a 24-hour entry notice.

If a dispute is likely to arise, it is better to err on the side of caution. For instance, you might phone ahead as well as serve the notice. Use more than one means of service or allow an extra day to ensure adequate notice is given.

Serving notices by post
Where notices are served by post, the sender must allow time for the mail to arrive when counting the days and working out the date for the notice period to end.

Australia Post’s standard delivery times, if posted by 6.00pm, are for delivery next business day in metropolitan areas and provincial cities, and for delivery on the second business day to most regional areas. For remote areas, the sender should check with Australia Post to determine the delivery time.

This means that the first day counted in the notice period is the day after the notice arrives at the address.

Serving notices in person or electronically
When serving notices in person, the server does not count the day of service in the notice period. The first day of the notice period should be the day after the notice is served.

The same rule applies if notice is served electronically by email or fax. The fax transmission report or email delivery receipt may be used as proof of the time and date of service.

Further information
For more information contact the Residential Tenancies Authority on 1300 366 311.

Accessing RTA forms
The RTA’s forms can be obtained electronically or in person by:
- www.rta.qld.gov.au
- 1300 366 311
- Level 23, 179 Turbot St Brisbane

A selection of the most commonly used forms are also available at Australia Post outlets around Queensland.

If you need interpreting assistance to help you understand this information, contact TIS on 13 14 50 (for the cost of a local call) and ask to speak to the Residential Tenancies Authority (RTA).

Disclaimer
This fact sheet is prepared for information only. The Residential Tenancies and Rooming Accommodation Act 2008 is the primary source on the law and takes precedence over this information should there be any inconsistency between the Act and this fact sheet.
End of the exemption period for rental properties with swimming pools

- On **8 July 2011** the State Government **exemption** period for property owners entering into an accommodation agreement without a valid pool safety certificate in effect **will end**.
- A reminder to real estate agents of the key changes under the reforms.

### 1. Exemption period for leased properties

To assist victims of the Queensland floods and Cyclone Yasi, the Government enacted an exemption to the application of the pool safety laws for rental properties with non-shared pools, such as houses. This exemption applied from 8 January to 8 July 2011 and allowed these properties to be leased without a pool safety certificate.

This exemption period ends on 8 July 2011. After this date all property owners leasing their properties will need to have a pool safety certificate in effect **before** an accommodation agreement is entered into. **Penalties** Failure to have a pool safety certificate in effect prior to an accommodation agreement being signed can result in a fine for the pool owner of $1,600. Fines are now being issued to property owners for this offence, and the Department of Local Government and Planning will be pursuing all property owners found to be in breach of this requirement.

**Agents’ Liability** Agents need to be aware that facilitating a lease, where there is no pool safety certificate for a non-shared pool, may be grounds for disciplinary proceedings under the *Property Agents and Motor Dealers Act 2000*. 
2. A reminder to Real Estate agents of the key changes under the reforms

**Sale — Non-shared pools** Where a property is sold, a buyer must obtain a pool safety certificate within 90 days of settlement, if the seller does not provide them with a certificate. Sellers are required to notify the potential purchaser if there is no certificate (Form 36) before entering a contract of sale.

**Sale and lease — Shared pools** The owner of a shared pool (e.g. the body corporate) must obtain a pool safety certificate if one is not already in place within 90 days of a sale or lease taking place. **But note** that shared pool owners can take advantage of a two year amnesty period on obtaining certificates that ends on 30 November 2012.

**Pool Safety Certificates — Validity** Pool safety certificates are valid for one year for shared pools and two years for non-shared pools. If another sale or lease occurs within this time, another certificate is not necessary.


For more information, please contact Building Codes Queensland, Department of Infrastructure and Planning on 1800 340 634 or email psc@dlgp.qld.gov.au