



REBA NEWS

A newsletter from the Real Estate and Business Agents Supervisory Board | Issue No.57 Summer 09

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Season's greetings from the Board



In 2009 the Board's priorities continued to be its core business of regulating the industry, providing education, advice and services of the highest standard and the continual improvement of its systems and skills required in carrying out its role and responsibilities.

The last year has been a challenging period for those of us involved in the real estate industry in Western Australia. The global economic downturn's impact on the State and national real estate market has been widely reported and there is now no question that the landscape of the Western Australian real estate industry has changed rapidly. Taking this challenging environment into account the Board is generally pleased with the overall level of industry performance and compliance.

Although the economic climate was a tough one, figures released from the Australian Bureau of Statistics show that for the first half of the year first home buyer activity was at its highest level since 2001. A combination of the Federal Government's First Home Owner Grant, low interest rates and softening house prices have all been suggested as reasons why there has been such an increase. The Board administered Home Buyers Assistance Account also received a record number of applications in this last year.

The Board's Compulsory Professional Development (CPD) initiative continued for individual licensed agents who hold a current triennial certificate and feedback

confirmed that the benefits of the program are being recognised and appreciated in the industry. On 1 January 2009 the Board undertook the major task of extending the program to include all registered sales representatives in Western Australia – a figure totalling approximately 9,500 people.

The Board's website is an integral tool in assisting to conduct and promote education and provide advisory services to industry participants and the public. Two new sections were added to the website in January 2009: *For Auditors* and *CPD*. They were designed to provide a dedicated section containing useful information for trust account auditors and CPD participants respectively. The Board is committed to the continuing development and improvement of the website and as such decided in May 2009 to redevelop the current website. The new website provides improved navigation, a new and easier to use search function, and new graphics. The new modern look can be seen at www.reba.wa.gov.au.

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The electronic bulletin (e-Bulletin) project has continued with great success. The Board decided in June 2009 that it would continue to publish e-Bulletins monthly in conjunction with the quarterly editions of *REBA News*. The e-Bulletins provide a cost-effective, time-effective and direct medium for important information and updates to be delivered to the industry. If you are yet to receive the e-Bulletins you can subscribe by simply emailing contactus@reba.wa.gov.au.

I would like to gratefully acknowledge my fellow members of the Real Estate and Business Agents Supervisory Board, Board staff and the staff of the Real Estate Branch of the Department of Commerce, and thank them for all their continued hard work and support in assisting the Board achieve its goals in 2009. I look forward to another year of focussed and busy activity for the real estate and business broking industries in 2010.

On behalf of the Board members and Board staff I wish you the warmest season's greetings and a safe, prosperous and happy new year.

Mark Cuomo

Chair

Bill Goddard recognised as REIWA hands out Awards for Excellence

The Real Estate Institute of Western Australia (REIWA) recently recognised some of the best and brightest in the business with its annual Awards for Excellence.

REIWA's Kevin Sullivan Award is the highest honour bestowed by the Institute recognising a particularly outstanding contribution by an individual to the real estate profession over an extended period. This year the prestigious award was presented to Real Estate and Business Agents Supervisory Board member Mr Bill Goddard.

In selecting a winner for the award, judges were looking at all aspects of the nominee's current and past professional contribution to the industry.

There were five excellent nominees for this year's award, which ultimately went to Mr Goddard.

Mr Goddard is a former Councillor and Vice President of the Institute. He has given thousands of hours to REIWA, as a life member, and the profession generally since first becoming involved in real estate in 1965.

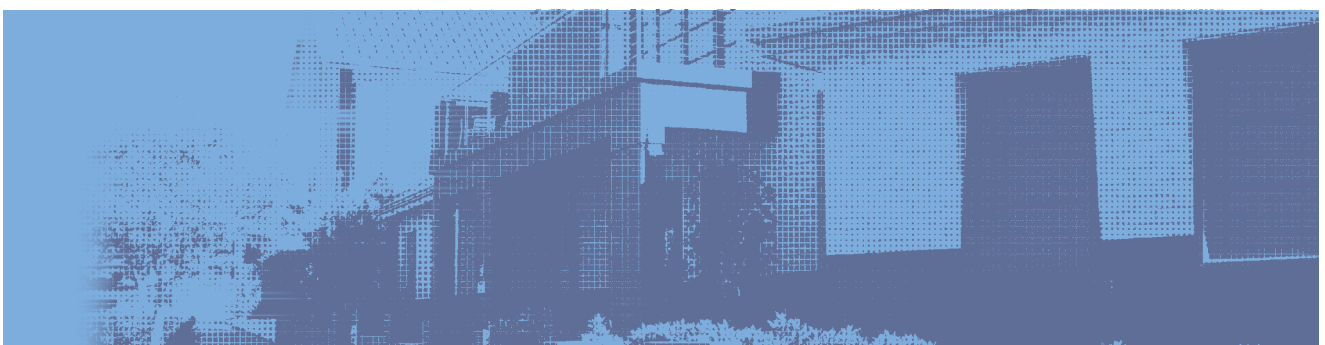
In 1985 he was elected for the first time as a deputy member of the Real Estate and Business Agents Supervisory Board and in 1989 he became a member of the Board, a position which he has retained for 20 years, being re-elected six times in that period.

He has been involved with community service organisations including Jaycees, the Chamber of Commerce, Neighbourhood Watch and Safer WA over an extended period and not just on the periphery, but front and centre in leadership roles assisting those in the community less fortunate than himself.

Immediate past REIWA President Rob Druitt said that Mr Goddard had an unapologetic commitment to ethical practice and to enhancing the reputation and professional status of real estate practitioners.

"These are goals which align exactly with those of REIWA, making him a very worthy winner of this most prestigious award," Mr Druitt said.

Rob Druitt was joined by Lord Mayor Lisa Scaffidi and other dignitaries to celebrate with the winners and to support the industry.



Rent to buy – wrapping schemes

The Board has recently been conducting investigations into a number of complaints regarding the practice of “wrapping” also known as “vendor finance”, “vendor terms” and particularly in Western Australia “rent to buy” schemes.

The Consumer Protection publication *Home buyers survival guide for WA* provides a simplified example of how the scheme works:

Andrea buys an investment property for \$100,000 and obtains a home loan from Bank A. Andrea pays Bank A about \$707 per month (7 per cent interest per annum) over 25 years to repay the loan. Andrea puts the property up for sale at \$110,000 and convinces Evan to enter a “wrap” contract. Evan applies for, and receives, the \$7,000 First Home Owner Grant, which he then pays to Andrea as a deposit towards the home. Evan also pays Andrea \$923 per month (9% interest per annum) so that he can eventually own the house.

As is typical under these arrangements, Evan is paying a lot more than Andrea for the home and for the loan. In addition, the certificate of title does not recognise that Evan is paying off the house with the intention of becoming the sole owner.

Andrea could sell the property at any time, without Evan’s knowledge. If Andrea doesn’t keep up her payments to Bank A, or goes bankrupt, Evan may not be able to remain in the house even though he continued to make his repayments to Andrea.

The “wrap” contract between Evan and Andrea includes a term that does not allow Evan to rent out the house to anyone while he is paying off the loan and while Evan is not on the certificate of title, he cannot sell the house.

A variation of this type of scheme involves signing a rent to buy (or lease option) contract. Usually, under this type of agreement, a deposit is paid and regular payments are made for the term of the lease. Once the lease term expires, the “tenant” has an option to buy the property from the seller/owner.

In 2004 the Department of Commerce released information stating that wrapping schemes were illegal in Western Australia. To provide this type of credit to WA consumers, lenders must be licensed as a credit provider and comply with the Consumer Credit Code, prohibiting such schemes.

Most of the complaints received by the Board have been from concerned real estate agents who have seen such schemes advertised on industry websites. The Board has been informed that websites such as realestate.com.au have their terms and conditions very clearly stating that agents are required to be licensed in the State in which they advertise, a requirement which it takes very seriously.

As the people placing these advertisements are often interstate and not registered with the Board, the Board may not have jurisdiction over this matter. However, these practices are illegal and should be discouraged as they can only be detrimental to those operating legally under the *Real Estate and Business Agents Act 1978*. If someone is discovered without a licence it should be reported to the Board. If practices such as these are occurring it is important to ensure they are reported to the Consumer Protection division at the Department of Commerce by phoning 1300 30 40 54 for the cost of a local call statewide, 8.30am – 5.00pm weekdays.



Update: Renewal applications now only accepted at Australia Post

In September 2009, the Board introduced important changes to the process for lodging applications to 'renew' a triennial certificate, place a licence on 'hold' or renew a sales representative registration.

These changes mean that from 1 December 2009 **all** renewal or licence hold applications are required to be lodged at Australia Post.

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

Licensing staff have had a number of enquiries about the two or three page 'Application Summary' document that prints once the form details have been completed and the 'Validate and Print' button is clicked. **It is correct that only a two or three page summary of your application will print. The information typed into the form is stored in the two-dimensional barcode on the second or third page of the Application Summary print out.** This Application Summary must be lodged at Australia Post together with the mandatory attachments listed under the 'Application Instructions' heading on the Application Summary.

Further details about the revised process are available from the REBA website at www.reba.wa.gov.au. All agents and sales representatives will also be advised of the new process in their renewal reminder notice. If you have any questions about the process for lodgement at Australia Post, phone the Board on 9282 0843 or the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide, 8.30am – 5.00pm weekdays.

Tenancy matters

Guide dogs and tenancy agreements

You manage a strata complex where the rules clearly state that no pets are allowed. You receive a tenancy application from a visually impaired individual, who requires a guide dog. Do you refuse the application based on the fact that no pets are allowed in the complex?

This question was recently raised by an agent to the Building and Tenancy Branch of the Department of Commerce and the answer applies to all tenancies not just to strata buildings.

The Equal Opportunity Commission advise this issue is covered under the *Equal Opportunity Act 1984*.

There are two forms of impairment discrimination – direct and indirect. These are defined as:

Direct impairment discrimination: takes place when a person is treated less favourably than another person, in the same or similar circumstances, on one or more of the grounds and in one of the areas of public life covered by the Equal Opportunity Act.

Indirect impairment discrimination: happens when an apparently neutral rule has a negative effect on a substantially higher proportion of people with a particular attribute or characteristic, e.g. race, compared to people without that attribute or characteristic, and the rule is unreasonable in the circumstances.

It is unlawful under this act to discriminate against a person who has an impairment.

In the situation described above, it may be seen as discriminatory to refuse the potential tenant only on the basis of the required guide dog. Under the *Equal Opportunity Act 1984* a guide dog is classed as an 'aid', not a pet. Therefore, even though strata complex rules may state 'no pets' – this rule does not apply in the case of a visually impaired tenant requiring a guide dog.

It's important to remember to exercise caution when dealing with potential discrimination issues. Further information can be found at www.eoc.wa.gov.au, or you can ask to speak to an officer in the Building and Tenancy Branch on 1300 30 40 54 for the cost of a local call statewide, 8.30am – 5.00pm weekdays.

Requirements for correspondence and documents: are your details stated correctly?

The Board has noticed that some agents are confused by the requirements under Section 41(2)(a) of the *Real Estate and Business Agents Act 1978* (the Act) to identify the correct licensee details on all documents and correspondence.

Section 41(2)(a) of the Act states:

(2) *On all correspondence, and on all documents prepared, in the course of business of a licensee at his registered office and every branch office*

(a) the licensee shall be identified as a real estate agent or business agent, or both, and the registered office of his business shall be shown

A document may be electronic or a hard version and is regarded as being:

- any appointment to act prepared by the agency;
- any offer and acceptance used by the agency;
- any receipt issued by the agency; and
- correspondence emanating from the agency.

The legal entity that holds the licence, together with the business name and the registered address (not a post office box), must be identified on all documents and correspondence as being a licensed real estate and business agent.

For example, as below:

SOLE TRADER

Where Tom Smith is licensed and trades solely using a business name such as ABC Realty, the following identification must appear on all documents and correspondence:

Tom Smith—Licensee
Trading as ABC Realty
Address
Licensed Real Estate and Business Agent

PARTNERSHIP

Where the partnership consists of two or more persons such as Tom Smith and Mary Smith and trades as ABC Realty the following applies:

Tom Smith and Mary Smith—
Licensee
Trading as ABC Realty
Address
Licensed Real Estate and Business Agent

BODY CORPORATE

Where a licence is issued to a body corporate such as ABC Pty Ltd, and uses the business name of ABC Realty the following applies:

ABC Pty Ltd—Licensee
Trading as ABC Realty
ACN/ABN
Address
Licensed Real Estate and Business Agent

Please note the identification requirements under the *Corporations Law*. The name of the company and its ACN/ABN number must be identified on all public documents including: documents required to be filed at the Australian Securities and Investments Commission; statements of account; receipts; orders for goods and services; business letterheads; cheques; and brochures and leaflets advertising any service.

The Board reminds all agents of the importance to review their documentation to ensure it complies with the above requirements.

“It’s tangible, it’s solid, it’s beautiful. It’s artistic, from my standpoint, and I just love real estate.”

DONALD TRUMP

Business agents corner

The new transfer of business rules contained in the *Fair Work Act 2009* (the Act) will have implications business agents in the industry.

The Act covers explanations such as requirements for transfer of work, obligations of a new employer, instruments that transfer, application, and variation and termination of transferring instruments.

The full Act can be viewed at www.workplace.gov.au.

Late audit reports may incur fine

Agents and their auditors could face penalties of up to \$600 as part of the Board's 'no tolerance' policy over late submission of audit reports.

Reports received after 31 March 2010 for the audit period 1 January 2009 to 31 December 2009 may incur a fine.

The Real Estate and Business Agents (General) Regulations 1979 states that an infringement notice of \$600 can be issued to agents failing to have trust accounts audited, and to auditors failing to deliver a report to the Board within three months after the end of each year.

The Board recommends agents arrange for an early audit and that auditors request records from agents in good time to meet the deadline. During the auditing process, agents are advised to maintain a record of any correspondence with their auditor.

Records should include correspondence from the agent advising the auditor that records are ready for auditing, together with the date the auditor is due to attend the agent's office. Records should also be kept of any files the agent delivers to the auditor, along with proof of correspondence.

Details of auditing requirements are highlighted in the *A guide to auditing real estate and business agents trust accounts* and *Real estate trust accounting – A reference manual*, available at www.reba.wa.gov.au. Alternatively, copies of the handbook are available by contacting the Board on 9282 0843, or the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide, 8.30am – 5.00pm weekdays.

Carmelo Parrella sentenced in District Court and Michael Mavaddat refused leave to appeal

On 6 August 2009 Carmelo (Charles) Parrella, previously trading as Charles Parrella & Associates, pleaded guilty to charges laid by the Director of Public Prosecutions (DPP).

Mr Parrella faced 29 charges of stealing a total sum of \$668,104.92 and on 12 August 2009 was handed down a 40 month custodial sentence back dated to 6 August 2009.

Mr Parrella will be eligible for parole once 20 months have been served.

Applecross real estate agent, Mr Michael Moojan Mavaddat, previously traded as Key West Realty, had his licence cancelled due to misconduct, and has now failed in a bid to appeal against the cancellation.

The Court of Appeal of the Supreme Court of Western Australia refused to grant leave to appeal against a decision of the State Administrative Tribunal and ordered him to pay the Board's costs of the appeal.

Compulsory Professional Development in 2010

The Board continues to be encouraged by positive feedback from the real estate industry on the Compulsory Professional Development (CPD) program and firmly believes its aim to increase professionalism and consumer confidence is being met. It is also expected that, as the program moves forward, compliance with and understanding of real estate legislation will continue to grow.

The new CPD cycle commences from 1 January to 31 December 2010.

The subjects for 2010 will be the same for licensed agents, sales representatives and property managers. They are:

- The Joint Form of General Conditions
- The Code of Conduct
- Strata Titles

The Board is also pleased to announce that the mandatory subjects will continue to be delivered by West Coast Property Training, Kaplan Professional and the Real Estate Institute of Western Australia (REIWA).

Please note: The CPD requirements for 2010 remain the same with agents, sales representatives and property managers requiring three mandatory and seven elective points. A list of Board approved elective courses can be found at the CPD section of the Board's website www.reba.wa.gov.au.

Compliance issues regarding advertising

Advertising is one of the top three causes for investigation by the Board into the sale of residential property. Agents need to be aware of the requirements for accuracy in specifying the details of properties, and the risk of breaching both the *Trade Practices Act 1974 (Cwlth)* and the Code of Conduct for Agents and Sales Representatives (the Code of Conduct).

The below issues concerning advertising have been highlighted as some of the main areas where agents are unsure on compliance.

Title searches

Title searches cannot be included in the advertising costs agreed upon in the written authority; however they must be carried out. Article 8(3) of the Code of Conduct is clear in this respect; when an agent receives instructions to offer real estate for sale he or she shall promptly obtain a copy of the certificate of title for the real estate.

Paying for advertising

This should be agreed upon prior to any advertising occurring (in the authority to act). Article 15(2) of the Code of Conduct states that the seller must agree in writing to this cost being incurred, a maximum amount is specified and this agreement is initialled by the principal. It has been brought to the Board's attention that some agents are listing the maximum costs to be paid by the seller as 100 per cent. The maximum advertising costs to which the seller agrees to in the appointment to act cannot be listed as a percentage; it must always be listed as a dollar amount. Further, the agent must supply all relevant information that may reasonably be required to satisfy the principal that these costs were properly incurred.

In-house advertising costs

The seller shall only pay for in-house advertising costs if this has been specifically agreed upon in the selling authority. This agreement should be specific: i.e. 100 flyers @ 20cents each = \$20, design and placement of internet advertising \$100 etc.

Price guides

In 2004 The Federal Court of Australia warned real estate agents that they could be breaking the law by advertising at a lower price, if the vendor has no intention of selling at the lower price. Price guides designed to lure potential purchasers which are without foundation may be found misleading and be in breach of the *Trade Practices Act 1974 (Cwlth)*.

Listing suburbs

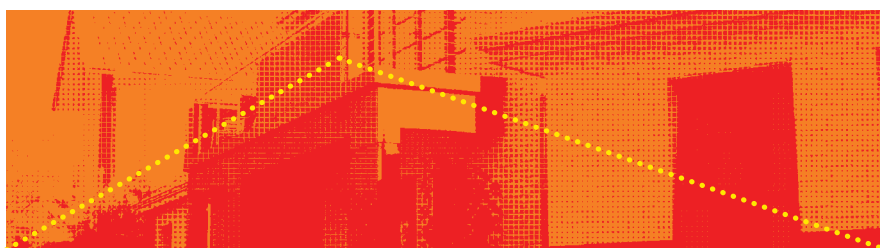
Incorrectly advertising the location of a property may be in breach of section 5(1) & 5(2) of the Code of Conduct. If in doubt, it is advisable for agents to check the location of the property against a reliable source such as the local municipality. Agents should not rely on the description provided by their seller. This means that if a property is located in a particular suburb, it should be advertised as such and not in a more prestigious suburb.

Unlisted properties

Agents cannot advertise properties unless they hold a valid appointment from the owner of the property. If a listing agent authorises another agent to advertise a property the 'other' agent is to identify the listing agent in the advertisement. The listing agent must obtain the seller's consent before advertising through another agency. When an unauthorised agent advertises a property under their company logo, trading banner or business letterhead, there is the risk that consumers may incorrectly believe that the agent has the listing for the property.

Identifying the agent

The Board advises that an advertisement must contain sufficient details to identify the agent. The trading name and agency office telephone number is a minimum requirement. The mobile number or home number of an agent or sales representative alone is not sufficient, neither is an email or website address. However these could be placed in an advertisement along with the minimum requirements mentioned.



Want to recoup advertising expenses?

If you are seeking reimbursement from an owner/landlord or property seller for any expenses you have incurred on their behalf, you should ensure you have a valid appointment to act to do so. An appointment to act should note the nature of any proposed expenses you are being authorised to incur and how they will be calculated as required by section 6BA of the Real Estate and Business Agents (General) Regulations 1979 (the Regulations).

When the expense relates to marketing a property for sale or rent, the principal needs to agree in writing to pay the expense and the appointment needs to state a maximum amount (initialled by the principal) which the agent may seek to be reimbursed in accordance with Article 15 of the Code of Conduct for Agents and Sales Representatives (the Code of Conduct).

If the principal has provided advertising funds “up front,” the agent needs to receipt these to the trust account, correctly and accurately account for any funds drawn and reimburse the principal any used funds once the property has settled or the appointment has ended.

When you are seeking reimbursement of an expense, you should be able to satisfy your principal (the landlord or seller) as to the amount claimed and that it was properly incurred. It is important to retain copies of invoices. It is a good idea to keep copies of advertising, either in an “advertising book” or in the specific sales/rental listing file, to provide to your principal should they request it.



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

THIS PUBLICATION WAS ISSUED BY THE REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD.

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