Real Estate Reforms

In November 2016, Victor Dominello, M.P., Minister for Innovation and Better Regulation released a Reform Paper for the Real Estate and Property Services Industry. The Reforms are generally divided into five main categories:

1. Licensing and Qualifications
2. Continuing Professional Development
3. Conduct and Accountability
4. Audit Processes
5. Disciplinary Powers

Following is a brief summary of each of the above categories, from a practical perspective as to what it means to your daily work practices and the possible impacts of each area if these proposed reforms are made into law next year.

I have attended a couple of meetings with NSW Fair Trading where these matters have been discussed with industry and also with the training providers, and hopefully they will continue to work with the stakeholders in this process, and a positive set of reforms will be the result. The Reform Paper is 43 pages long, so the following 3 pages are simply a shortened version with some of my personal comments attached. Once we receive more detailed information through the Reform Committee and also through the network of training providers, I will update this information and let those of you on our database know of the changes.

The Australian College of Professionals will be working with the Estate Agents Co-operative (EAC) in the development of a response to NSW Fair Trading. During this process, we will be seeking support from the industry. You can make direct comment to EAC, which will be considered and incorporated as appropriate into the submission to government. The link to the EAC information is: https://eac.com.au/blog/2016/11/21/real-estate-and-property-services-industry-reform-paper-november-2016/

1. Licensing and Qualifications

- The Certificate of Registration training requirements will include more Units of Competency. This will mean a longer course, a more detailed assessment and a probable increase in price to incorporate the additional training requirements
- A Certificate of Registration holder will need to obtain a licence within 4 years
- The role of a person holding a Certificate of Registration will be defined and some people currently holding certificates will no longer have this requirement
- The role of the licensee-in-charge will be more defined in terms of their supervision responsibilities
- To obtain a licence, the applicant must hold the required Certificate IV in Property Services qualification (no change to current requirement) BUT must also have twelve (12) months of practical experience in the industry
- A new licence category will be created, known as a “Licensee In Charge”. This is a new category, and applicants for this category must hold a Diploma level qualification from the property training package OR the Certificate IV in Property Services plus another Certificate IV qualification in business management. In addition, a person making application for a Licensee In Charge licence, MUST also have at least two (2) years of experience within a licensed business. Applicants must prove to Fair Trading as part of their application, that they have achieved specific competencies during that two years of practical experience. These competencies have not yet been identified.
• The supervision guidelines for the new Licensee In Charge category of licence will be up-dated
• The Buyers Agent’s licence, the On-Site Residential Property Manager’s licence and the Business Agent’s licence will be incorporated under the one real estate licence category.
• The corporation licence will be abolished
• Renewal periods can be chosen from 1 year or 5 year periods.

Comments:
Most of these proposals are aimed at increasing the professionalism of the industry and also to address specific issues in relation to consumer protection.

My two main concerns for this category of reform are:
• deletion of the Business Agent’s licence category. I believe that this area of the industry is highly specialised and requires specific training to address the role and function of selling, buying and leasing businesses. In addition, many small business owners are mums and dads, who at both the buying and the selling stage, require protection as a consumer. This level of protection is diminished if we have an industry where people without the appropriate skills, knowledge and qualifications are providing services.
• deletion of the corporation licence category. This issue is being examined in far more detail by others in the industry, and I will bring you their comments when they are released. But in summary, the deletion of the corporation licence, will definitely decrease red-tape, but will have a major impact on the value of rent rolls and their sale and also how commission-only people are employed within the industry.

NSW Fair Trading are stating that there will be a transition period for the new licensing process, where the most likely transition process will be that people who hold a licence at the end of next year (that is, just prior to the implementation of the new laws), will be automatically granted the new Licensee In Charge licence category at that time, or any time in the future when they make application. So this means that if you ever intend to work commission-only or open your own agency, that you will require the Licensee In Charge category for that purpose. So if you don’t hold a licence prior to the new laws, you will have greater training requirements and will need to provide evidence of your past 2 years of experience in the industry and be assessed against specific business level competencies.

2. Continuing Professional Development
• CPD for Certificate holders will be gained through the completion of Units towards the Certificate IV licence qualification. The amount of CPD has not yet been finalised. Licensees In Charge will be responsible for ensuring that Certificate holders complete their CPD
• CPD for licence holders will increase from 12 points to 6 hours. These 6 hours will be split into compulsory topics (3 hours) and elective topics (3 hours). The compulsory topics can only be delivered by industry groups (such as EAC) and government agencies. Industry groups will be defined to include current industry groups and other entities that have been approved by the Minister to provide the compulsory CPD topics.
• CPD for Licence In charge licence holders will be the same 6 hours as for licence holders PLUS an additional 3 hours focused on business skills
• The training providers will submit details to Fair Trading in relation to those persons who have successfully completed their CPD requirements
Comments:
These reforms are fairly straight-forward and once Fair Trading have further defined some definitions, CPD should continue to be a valuable annual program for increasing the skill and professionalism of the industry as a whole, which will also be good for consumers.

3. Conduct and Accountability
- Licence holders to provide an annual update to clients regarding fees, charges and commissions. This is a consumer protection mechanism allowing the consumer to opt out of an agreement if they believe that they are being over-charged for the service that they are receiving.
- Agents will not be permitted to receive gifts or other benefits over the prescribed amount of $60. Such “other benefits” may include the provision of free training in return for referrals – such as from solicitors or conveyancers.
- Require licence holders to obtain three (3) quotes for services, when the cost of the goods or services is more than $2,000. For property management and strata services, this is already undertaken as best practice by most agents, so this is simply legislating for good practice.
- Define material fact for the sales process. This is long overdue, as the definition contained in the Residential Tenancies Act 2010 is specific and easy to implement. This will make it clearer for agents, vendors and purchasers to understand the type of information that needs to be disclosed in the sales process.

4. Audit Processes
- Agents to transfer rental income (except for authorised expenses) to landlords at the end of each month, unless specifically instructed not to do so by their client.
- Agents will hold separate trust accounts for rents and sales trust monies.
- All audits of trust accounts, whether qualified or not, to be lodged with NSW Fair Trading. So it’s back to where we were a few years ago. This is a good consumer protection action and a good decision from Fair Trading. Fair Trading will also develop an on-line portal for the lodgement of the audits, to streamline the process.

5. Disciplinary Powers
- Fair Trading will give themselves the power to temporarily suspend a licence or a certificate of registration whilst an investigation is underway.
- Introduce a power to immediately cancel a licence or a certificate of registration that was obtain using false particulars or issued in error.
- Introduce a power to suspend a licence for failure to submit an audit.

Comments:
I am concerned with the first of these reforms, as all people should be considered innocent until proven guilty – not the other way around. Mind you, agents who are doing the wrong thing should be prosecuted accordingly, but not have their businesses undermined by a possible vexatious complaints from either a client or a competitor.

Rosy Sullivan
Director / College Principal
Australian College of Professionals