

Real Estate Reforms

In November 2016, Victor Dominello, M.P., (the then) 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

The current Minister for Innovation and Better Regulation, the Hon. Matt Kean has continued to support the development of the Property Industry Reforms and is working closely with the Reform team within NSW Fair Trading, to ensure that this initiative is brought to fruition.

Since the initial release of the draft reforms, there have been many consultation meetings with NSW Fair Trading from the industry bodies, Registered Training Organisations and other interested parties. To their credit, NSW Fair Trading has taken a lot of this information on board and they have now completed the draft Bill that will be forwarded to parliament in the near future.

Following is an up-dated 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.

The Reform Paper is 43 pages long, and the draft Bill is 13 pages in length, so the following 3 pages are simply a shortened version with some of my personal comments attached. We should be reminded that the Bill, if passed by both houses of parliament, will result in the revisions to the Property, Stock and Business Agents Act, and NSW Fair Trading will then undertake the process of developing the Regulations that will work in conjunction with the revisions.

Once we receive more detailed information about the progress of the draft Bill, we will let those of you on our database know of the changes.

The Australian College of Professionals continues to work with the Estate Agents Co-operative (EAC) in the liaison with NSW Fair Trading and having input into the progress of the Property Industry Reforms. We will always appreciate comment and support from the industry, and you can always email the College with your comments in relation to the proposed reforms.

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
- A person holding a Certificate of Registration will not be able to legally bind parties to a sales or management agreement or undertake trust transactions
- 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. This experience will need to include both sales and property management experience.
- 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, and will focus on both sales and property management.

- 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.
- 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.

I was previously concerned about the abolition of the Business Agents licence category. However, it has been clarified that this will be a part of the Real Estate Agents licence, meaning that if a person wishes to sell a business (or going concern), they will need to hold a real estate licence. Also, there will be a transition process, where those people who currently hold a business agents licence, will be granted a restricted real estate licence under the new reforms, restricting them solely to the sale of businesses.

I was also previously concerned about the deletion of the corporation licence category. However, this has now been amended and the Corporation Licence will remain as a requirement for those people operating their businesses as a Pty Ltd company.

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 time the new reforms are implemented (currently predicted as being the middle of 2018), upon application to NSW Fair Trading, 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 change 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 Licensee-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 outlined 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 (which will be nominated in the Regulations). Agents must not accept a gift or other benefit that may be considered to give rise to a conflict of interest. This does not include a gift received in gratitude for services provided under an agency agreement.
- 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 sales 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 obtained 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.

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