

## **BE WARNED – INSPECTORS IN NSW TARGETING PROPERTY MANAGEMENT**

On Site Residential Property Managers and Building Managers holding full real estate agents licences to conduct letting – beware!

The Office of Fair Trading has been taking compliance actions against agents (including On Site Residential Property Managers) that do not meet their obligations. Inspectors have issued non-compliant agents/managers with penalty infringement notices totalling \$16,500.00. Failure to comply with the Supervision Guidelines (referred to below) carries a penalty of up to \$22,000.00 for a corporation or \$11,000.00 in any other case.

Under the Property and Stock Agents Act 2002 (“Act”), every place of business must have a Licensee in Charge (“LIC”). A LIC is responsible for the proper supervision of the business and must hold a Class 1 licence (noting however, that an On Site Residential Property Managers licence is an equivalent of a Class 1 licence). Corporations or individuals who run a business under a Class 2 licence must employ a Class 1 licence holder to be the LIC of their business.

The key requirements when appointing a LIC are –

- all parts of a business must be supervised by the LIC;
- only a LIC can authorise the withdrawal of funds from the trust account;
- the LIC must ensure proper supervision of the business in accordance with the Secretary’s Guidelines for the Proper Supervision of the Business of a Licensee (the “Supervision Guidelines”);
- if a nominated LIC is not available for whatever reason, NSW Fair Trading must be notified of the replacement LIC within 5 business days.

### **Why Have The Supervision Guidelines Been Introduced?**

Licensees who run a sales/letting business have a legal obligation to ensure the proper supervision of their business.

The NSW government takes the view that it is vital that businesses are properly supervised, particularly as large sums of money in trust accounts may be involved. Poor supervision can cause distress and financial loss for consumers. It can also lead to claims of negligence, misleading conduct and fraudulent use of trust money – for which substantial maximum penalties apply.

The Supervision Guidelines sets out the government's requirements for proper supervision of a business, including the steps that a LIC must take to prevent fraud and misrepresentation.

These requirements include –

- supervision of employees engaged in the business; and

- establishment of procedures designed to ensure that the provisions of the Act, the Regulations and other relevant laws are complied with; and
- monitoring employees' conduct to ensure that those procedures are being followed.

### **What Are The Key Requirements Of The Supervision Guidelines?**

#### **Every LIC must:**

1. Prepare and maintain a document as part of the operational procedures that clearly identifies the LIC of the business and the dates on which that person was the LIC;
2. ensure that details of the LIC (including the dates that person commenced and finished being a LIC) are notified to the Secretary in accordance with the Act;
3. prepare and maintain operational procedures for the purposes of providing adequate supervision of business processes and employee conduct across their business;
4. ensure all operational procedures of the business are reviewed at least once each calendar year to ensure they are sufficiently robust and comply with the law;
5. ensure all persons engaged in the business are familiar with, and comply with, all operational procedures;
6. prepare and maintain written procedures for the review of their trust account and daily or next day banking practices with respect to the receipt of trust money;
7. conduct a review of their trust account transactions at least once per calendar month to ensure that the amounts deposited into and withdrawn from the trust account have been verified using the relevant financial institution's records as source documents, that all persons who have access to the trust account system have separate logins and their passwords are not shared with anyone and that any adjustments shown in an end of month reconciliation can be explained with evidence;
8. ensure that all rental (and sale) money is paid into the trust account and rental money owing to a landlord under a residential tenancy agreement (less any authorised expenses) is paid to the landlord at the end of each calendar month, unless instructed otherwise by the landlord;
9. maintain a record of all cash transactions, including, at a minimum, the cash amount received, the name of the person who received the cash from the payer, the name of the person who prepared the daily banking of those funds, the name of the person who deposited the funds in trust at the financial institution and the trust account details;
10. prepare and maintain written procedures for the verification of the identity of a party with whom it is proposed to enter an agency agreement and a record must be kept of all documentation relied upon to verify an individual's identity;
11. if applicable, in the case of a person who has the legal right to act on behalf of the owner and where that person is not listed on the certificate of title, ensure that the original or a certified copy of the document which confers the power of sale or management on that person is sighted and a copy of the document retained.

## Requirements For Verifying the Identity Of A Person

In verifying the identity of a person, a licensee must sight an original or certified copy of –

- (a) a primary proof of identity document; and
- (b) two secondary proof of identity documents; and
- (c) a document providing proof of legal ownership of the property.

A “primary” proof of identity document is listed as –

1. a current Australian driver licence; or
2. a current photo card issued by a State or Territory Government agency; or
3. a current Australian passport; or
4. a current non-Australian passport.

A “secondary” proof of identity document is listed as –

1. a current Medicare card; or
2. a current credit card; or
3. a current passbook or an account statement from a bank, building society or credit union up to one year old; or
4. an electoral enrolment card or evidence of enrolment not more than two years old; or
5. a gas, electricity or council rates bill up to one year old; or
6. a water rates notice up to one year old.

A document that is “proof of legal ownership” of the property is –

1. the certificate of title for the property; or
2. a current council rates notice up to one year old; or
3. a land valuation notice up to one year old.

A LIC must also prepare and maintain written procedures that ensure all communication during the provision of services under an agency agreement is with the owner of the property or the person with the legal right to act on the owner’s behalf. A LIC must also prepare and maintain written complaint handling procedures.

## Employee Supervision

A LIC must also –

1. prepare and maintain written procedures outlining the respective roles and responsibilities of licensees and employed certificate holders in relation to the preparation and signing of agency agreements,

2. be responsible for verifying that all persons engaged in the business have completed all continuing professional development courses they are required to undertake (according to the Secretary's requirements issued and notified to licensees and certificate holders under the Act), as well as ensuring that the applicable work experience requirements in accordance with the Property and Stock Agents (Qualifications) Order 2019 have been met, and also recording the length of time an individual has been engaged by the business.

### **Gifts and Benefits Register**

A LIC must also prepare and maintain a register of all gifts and benefits received by persons engaged in the business in accordance with the Act.

### **What You Need to Do – Now!**

If you haven't already done so, every onsite manager needs to urgently comply with the Supervision Guidelines – or risk a substantial fine if an inspector knocks on your door.

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