CPPDSM4080A

WORK IN THE REAL ESTATE INDUSTRY

LEARNER RESOURCE

entry education

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UNIT INTRODUCTION

This resource covers the unit CPPDSM4080A - Work in the real estate industry.

This unit of competency specifies the outcomes required to enable a new entrant to the industry to gain a basic understanding of the industry and work ethically and effectively in a real estate agency. This includes awareness of ethical and conduct standards, core functions of real estate agency operations, legislative and regulatory framework within which the industry operates and industry employment requirements.

The unit may form part of the licensing requirements for persons engaged in real estate activities in those States and Territories where these are regulated activities.

This unit of competency supports the work of licensed real estate agents and real estate representatives.

About This Resource

This resource brings together information to develop your knowledge about this unit. The information is designed to reflect the requirements of the unit and uses headings to makes it easier to follow.

You should read through this resource to develop your knowledge in preparation for your assessment. At the back of the resource are a list of references you may find useful to review.

As a student it is important to extend your learning and to search out textbooks, internet sites, talk to people at work and read newspaper articles and journals which can provide additional learning material.

Your trainer may include additional information and provide activities, PowerPoint slide presentations, and assessments in class to support your learning.

About Assessment

Throughout your training we are committed to your learning by providing a training and assessment framework that ensures the knowledge gained through training is translated into practical on the job improvements.

You are going to be assessed for:

- Your performance and knowledge using written and practical activities that apply to a workplace environment.
- Your ability to apply your learning to the workplace.
- Your ability to recognise common principles and actively use these on the job.

You will receive an overall result of Competent or Not Yet Competent for the assessment of this unit. The assessment is a competency based assessment, which has no pass or fail. You are either competent or not yet competent. Not Yet Competent means that you still are in the process of understanding and acquiring the skills and knowledge required to be marked competent.

The assessment process is made up of a number of assessment methods. You are required to achieve a satisfactory result in each of these to be deemed competent overall.

All of your assessment and training is provided as a positive learning tool. Your trainer/assessor will guide your learning and provide feedback on your responses to the assessment. For valid and reliable assessment of this unit, a range of assessment methods will be used to assess practical skills and knowledge.

Your assessment may be conducted through a combination of the following methods:

- Written Activity

- Case Study
- Observation
- Practical tasks
- Short answer questions
- Third Party Report

The assessment tool for this unit should be completed within the specified time period following the delivery of the unit. If you feel you are not yet ready for assessment, discuss this with your trainer/assessor.

To be successful in this unit, you will need to relate your learning to your workplace. You may be required to demonstrate your skills and be observed by your assessor in your workplace environment. Some units provide for a simulated work environment, and your trainer and assessor will outline the requirements in these instances.

ELEMENTS AND PERFORMANCE CRITERIA

1 Develop knowledge of estate agency operations	1.1 Key features of the agency principal relationship are identified and interpreted according to legislative requirements and agency practice 1.2 Roles and responsibilities of key personnel involved in estate agencies are identified in line with legislative requirements and agency practice 1.3 Information on key operations of estate agencies is identified in the context of legislative and agency requirements 1.4 Forms of business ownership, organisational structure and services offered by estate agencies, including liabilities and responsibilities, are identified
2 Interpret and comply with legislative and agency requirements	2.1 Approaches for sourcing and accessing legislation relevant to agency operations are applied 2.2 Legislation and ethical and conduct standards relevant to estate agency operations, including legislative limitations on agency practice, are identified to ensure compliance with legislative and agency requirements 2.3 Licensing and eligibility requirements for licensed real estate agents, real estate representatives and other employees, including offences and penalties, are identified to ensure compliance with legislative and agency requirements 2.4 Key provisions of consumer protection and privacy legislation are identified in relation to agency practice. 2.5 Purpose of trust funds and the key legislative controls on trust funds relevant to authorised employees are identified to ensure compliance with legislative and agency requirements 2.6 Roles and responsibilities of government agencies and industry bodies are identified in relation to agency practice 2.7 Personal understanding of legislative requirements is assessed and verified with relevant people

	2.8 Situations in which specialist advice is required are identified and sources of appropriate advice are determined in line with agency practice
3 Model ethical practice	3.1 Ethical and conduct standards, including penalties for breaches, are identified and interpreted to ensure compliance with legislative requirements and industry and agency practice
	3.2 Agent's liability for breach of contract and negligence is identified in the context of legislative and agency requirements
	3.3 Personal understanding of ethics and conduct standards required for good agency practice is verified with relevant people to ensure compliance with legislative requirements and industry and agency practice
	3.4 Situations in which specialist advice is required are identified and sources of appropriate advice are determined in line with legislative and agency requirements
4 Identify industry employment requirements	4.1 Industry employment requirements are identified and interpreted to ensure compliance with legislative requirements and agency practice
	4.2 Employee and employer rights and responsibilities regarding conditions of employment are identified and interpreted to ensure compliance with legislative requirements and agency practice
	4.3 Effective communication strategies are employed to establish rapport with clients, determine client needs, and provide accurate advice and follow-up services in line with agency practice
	4.4 Personal presentation and professional image are assessed for compliance with industry and agency norms
	4.5 Personal knowledge and skills in providing real estate services are assessed against industry competency standards and other relevant benchmarks to determine continuing training needs and priorities
	4.6 Opportunities for continuing training to maintain currency of competence and develop specialist and advanced skills and knowledge are identified, planned and applied in line with agency practice

PERFORMANCE AND KNOWLEDGE EVIDENCE

This describes the essential knowledge and skills and their level required for this unit.

Performance Evidence

- Ability to communicate with and relate to a range of people from diverse social, economic and cultural backgrounds and with varying physical and mental abilities
- Analytical skills to interpret documents such as legislation, regulations, employment contracts and licensing requirements
- Application of risk management strategies associated with advising clients on property sales and property management options
- Computing skills to access agency and resource databases, use standard software packages, send and receive emails, access the internet and web pages, and complete and lodge standard documents online
- Decision making and problem solving skills to analyse situations and make decisions consistent with legislative and ethical requirements
- Literacy skills to access and interpret a variety of texts, including legislation, regulations and rules of ethics; prepare general information and papers; prepare formal and informal letters, reports and applications; and complete standard forms
- Negotiation skills to assist clients with property sales and property management matters
- Numeracy skills to calculate and interpret data, such as commissions and entitlements
- Planning, organising and scheduling skills to undertake work-related tasks such as

inspecting properties

- Research skills to identify and locate documents and information relating to real estate operations
- Self-management skills to organise own work, deliver quality customer service and effectively manage competing demands
- Teamwork skills to work effectively in and promote communication between sales, property management and administrative teams in an agency environment

Knowledge Evidence

- Agency principal relationship
- Continued training needs for agents and agents' representatives
- Employee and employer rights and responsibilities
- Ethical and conduct standards
- Features of good agency practice
- Forms of business ownership, and organisational structure and services offered by estate agencies
- Key operations of estate agencies
- Key principles of consumer protection and privacy legislation
- Legislative limitations on agency practice
- Licensing requirements for estate agents
- Nature of trust funds and key legislative controls on trust funds
- Offences and penalties under the legislative framework
- Relevant federal, and state or territory legislation and local government

regulations relating to:

  - Anti-discrimination and equal employment opportunity
  - Consumer protection, fair trading and trade practices
  - Employment and industrial relations
  - Financial services
  - OHS
  - Privacy

- Risks and risk management strategies
- Roles and function of industry bodies
- Roles and functions of government regulatory agencies
- Roles and responsibilities of estate agency personnel
- Sources of specialist advice relating to real estate operations

ASSESSMENT CONDITIONS

The evidence guide provides advice on assessment and must be read in conjunction with the performance criteria, required skills and knowledge, the range statement and the Assessment Guidelines for this Training Package.

A person who demonstrates competency in this unit must be able to provide evidence of:

- Application and knowledge of the ethical and conduct standards relevant to licensed real estate agents, real estate representatives and support staff
- Application and knowledge of the key operations of estate agencies and the roles and responsibilities of agency personnel
- Knowledge of legislation and the regulatory framework relevant to real estate agency, including the roles and functions of government regulatory agencies and industry bodies
- Application and knowledge of the key principles of consumer protection and privacy legislation
- Knowledge of the agency principal relationship
- Application and knowledge of employment requirements for estate agents, including the rights and responsibilities of employers and employees
- Application and knowledge of the licensing and eligibility requirements for estate agents and other employees, and penalties associated with related offences

PRE-REQUISITES

This unit must be assessed after the following pre-requisite unit:

There are no pre-requisites for this unit.

TOPIC 1 – DEVELOP KNOWLEDGE OF ESTATE AGENCY OPERATIONS

Welcome to the unit CPPDSM4080A - Work in the real estate industry.

This unit of competency specifies the outcomes required to enable a new entrant to the industry to gain a basic understanding of the industry and work ethically and effectively in a real estate agency. This includes awareness of ethical and conduct standards, core functions of real estate agency operations, legislative and regulatory framework within which the industry operates and industry employment requirements.

The unit may form part of the licensing requirements for persons engaged in real estate activities in those States and Territories where these are regulated activities.

This unit of competency supports the work of licensed real estate agents and real estate representatives.

In this unit you will learn how to:

- Develop knowledge of estate agency operations
- Interpret and comply with legislative and agency requirements
- Model ethical practice
- Identify industry employment requirements

Let's begin!

Key features of the agency principal relationship are identified and interpreted according to legislative requirements and agency practice

Agency principal relationship

In order to develop knowledge of the estate agency operations you will need to identify the key features of the agency principle relationship.

Key features of the agency principle relationship

There are several key features of the agency principle relationship. These include:

- The concept of agency involves:
    - **The principal –** the person who instructs the estate agent and who the estate agent represent.
    - **The agent –** who is authorised to represent the principal.
- The contract of agency in real estate is the legal relationship that is formed when the principal (vendor or landlord) appoints the agent to arrange a transaction on the principles behalf, evidenced by a written authority to do so.
- The agent is authorised to represent the principal to find a third party who is willing to agree to the principal's terms. The principal and the third party then enter into a binding contract between them.

When interpreting this relationship, you will need to ensure you have a full understanding of the legislative requirements and the agency practice. Throughout this resource, we will be referring to and explaining legislative requirements and agency practice in more detail. For now, we will list the legislative requirements which relate to:

- Anti-discrimination and equal employment opportunity
- Consumer protection, fair trading and trade practices

- Employment and industrial relations
- Financial services
- OHS/WHS
- Privacy

Features of good agency practice

- Provision of the following information to the public:
    - Displaying of licence in a visible position at every premises where business is conducted
    - Advertising – all advertising must include the name of the agency in all advertisements connected with the real estate business
    - Including the name of the estate agency on all public documentation including letterheads and business documents
- Complying with all licencing and eligibility requirements
- Complying with any disclosure required for commission sharing
- No conflict of interest

Roles and responsibilities of key personnel involved in estate agencies are identified in line with legislative requirements and agency practice

Roles and responsibilities of estate agency personnel

Roles and responsibilities of key personnel may include:

- Licensed real estate agent
- Real estate representative
- Support staff

Licensed real estate agent

Real Estate Agents perform a range of duties which vary depending on their area of specialisation, the type of property, and their level of experience. These responsibilities may include:

- *Deciding the method of sale, costs and inspection times with the property owner or seller*
- *Analysing market pricing and trends and recommending a reserve or minimum selling price*
- *Organising the listing and advertising of properties for sale*
- *Meeting with buyers to understand their requirements in a property*
- *Locating and inspecting appropriate properties for purchase.*
- *Providing advice on conditions of sale*
- *Conducting auctions, open houses or property inspections*[1]

[1] https://www.seeklearning.com.au/industries/real-estate/real-estate-agent/job-description

Real estate representative

A Registered Real Estate Agent (also known as Real Estate Salesperson or Agent's Representative) is employed by a licenced Real Estate Agent and can undertake some of the duties of the Agent on their behalf. To become a Real Estate Salesperson or Representative, you'll need to obtain a Certificate of Registration which will involve certain education requirements.

The duties and requirements for Real Estate Agents and their Representatives may vary in each state.[2]

Support staff

Receptionists and administrative personnel are among the most important contributors to a real estate office. The role of the receptionist is very important, as it is the first point of contact for the agency's clients. This role can vary considerably. However tasks usually include the following:

- *Answering the telephone and handling enquiries*
- *Face-to-face communication with clients*
- *Receiving rents and providing receipts*
- *Word processing*

In some offices, the receptionist's position may be a training ground for progression into a sales or property management career.

Other staff may be employed to provide administrative support to a variety of departments within a real estate agency. Depending upon the department, the role may include clerical duties, including the preparation of legal documents, arranging advertising, word processing, database management and general accounting duties.[3]

[2] https://www.seeklearning.com.au/industries/real-estate/real-estate-agent/job-description
[3] https://reia.asn.au/training/a-career-in-real-estate/

Information on key operations of estate agencies is identified in the context of legislative and agency requirements

Key operations of estate agencies

Estate agencies perform two vital roles. These include property sales and property management. Below is a basic explanation of both:

- The key operations of an estate agency are:
    - **Property Sales** – which involves listing, advertising and marketing a property or a business, negotiating the sale and arrange the signing of the contract between the vendor and the purchaser.
    - **Property management** – which covers listing, advertising and marketing a property, selecting tenants, leasing property, collecting rent, and the overall maintenance and management of real estate properties on behalf of the landlord.

There are also many other services that are provided by the real estate agency. The services that relate to the legal functions of estate agencies include:

- Marketing sale and leasing – a range of property types including residential, rural, commercial and industrial real estate
- Property management – across a range of property types including collecting rent, paying rates and insurance, repairs and maintenance, and providing a financial statement of money paid and collected each financial year
- Business broking – selling businesses (not necessarily including the property at which the business operates) on behalf of vendors
- Byers' advocacy – where an estate agent acts solely for the purchaser by sourcing suitable properties and representing the purchaser throughout the buying process

Forms of business ownership, organisational structure and services offered by estate agencies, including liabilities and responsibilities, are identified

Forms of business ownership, and organisational structure and services offered by estate agencies

Business ownership models

As in most industries, there are several forms of business ownership that you will come across in relation to real estate agencies. The forms of business ownership and organisational structure and services that can be offered by estate agencies include:

- Sole trader – The agency is owned and operated by a sole estate agent who has unlimited liability for the debts of the agency. If the business fails, the estate agent's private assets may be liquidated to pay the debts of the business.
- Partnership – In a partnership, in real estate is generally between 2 and 7 people join together to own and operate a business (section 51 of the *Partnership Act 1958* (Vic)). The Partnership Act outlines the rights and obligations of partners in respect to partnership operations. In Victoria, all partners in a real estate business must be licenced estate agents. The property of a partnership is owned jointly by the partners.
- Company – A company is a legal entity that is separate from the members who form the company. Most companies are incorporated as companies limited by shares.

Organisational models

There are also different organisational models represented in real estate agencies. These models include:

- Independent agency - has no formal arrangements with other agencies, and their overall operation is not linked to any other agency or organisation.
- Franchise group – Franchising is when a number of estate agencies (called franchisees) arrange with a franchisor to conduct business under the franchisor's name. In return, the franchisor receives a percentage of the franchisees' gross commission or turnover paid. The franchisee may also be required to contribute towards marketing and advertising the franchise group by paying a separate levy.
- Marketing Cooperative - A marketing cooperative is a non-profit organisation formed by independent estate agencies to benefit from advertising, marketing and purchasing as a group.
- Principal and branch offices – Regardless of the business ownership and organisational model being used, agencies must have an office or offices from which it operates. The head office is called the principal office and is the office from which the business is managed. Any other offices are branch offices and operate under the control of the principal office and its manager.

TOPIC 2 – INTERPRET AND COMPLY WITH LEGISLATIVE AND AGENCY REQUIREMENTS

Approaches for sourcing and accessing legislation relevant to agency operations are applied

Its important to note that Entry Education is Australia wide and has made this material to suit the requirements of all learners. Please see below for the legislation that applies to each state.

Australian Capital Territory - Agents Act 2003(ACT)
New South Wales - Property, Stock and Business Agents Act 2002 (NSW)
Queensland - Property Agents and Motor Dealers Act 2000 (QLD)
Northern Territory - Agents Licensing Act (NT)
Western Australia - Real Estate and Business Agents Act 1978 (WA)
South Australia - Land Agents Act 1994 (SA)
Victoria - Estate Agents Act 1980 (VIC)
Tasmania -Property Agents & Land Transactions Act 2005 (TAS)

Legislation relevant to agency operations

There is a variety of legislation that applies to real estate agencies and their workers. The relevant federal, and state or territory legislation and local government regulations relate to:

- Anti-discrimination and equal employment opportunity
- Consumer protection, fair trading and trade practices
- Employment and industrial relations
- Financial services
- OHS/WHS

- Privacy

Anti-discrimination and equal employment opportunity

In Australia, national and state laws cover equal employment opportunity and anti-discrimination in the workplace. You're required by these laws to create a workplace free from discrimination and harassment. It's important that as an employer, you understand your rights and responsibilities under human rights and anti-discrimination law. By putting effective anti-discrimination and anti-harassment procedures in place in your business, you can improve productivity and increase efficiency.

It’s unlawful to disadvantage employees and job seekers in any way because of their:

- Race
- Colour
- Gender
- Sexual preference
- Age
- Physical or mental disability
- Marital status
- Family or carer’s responsibilities
- Pregnancy
- Religion
- Political opinion
- National extraction
- Social origin

Consumer protection, fair trading and trade practices

Consumer protection for real estate is in relation to:

- *It is unlawful for real estate agents to:*
  - *intentionally mislead you*
  - *lead you to a wrong conclusion or impression*
  - *give you a false impression*
  - *leave out or hide important information (e.g. in fine-print disclaimers)*
  - *make false or inaccurate claims*[4]

Australian Consumer Law and Fair Trading Act 2012. The main purposes of this Act are—

- (*a) to promote and encourage fair trading practices and a competitive and fair market;*
- *(b) to protect consumers;*
- *(c) to regulate trade practices;*
- *(d) to provide for codes of practice;*
- *(e) to provide for the powers and functions of the Director of Consumer Affairs including powers to conciliate disputes under this Act and powers to carry out investigations into alleged breaches of this Act;*
- *(f) to promote uniformity with the consumer laws of other jurisdictions through the interpretation and application of the Australian Consumer Law in Australia consistently with those laws;*
- *(g) to regulate certain businesses;* [5]

[4] https://www.accc.gov.au/consumers/health-home-car/real-estate
[5] http://www.austlii.edu.au/au/legis/vic/consol_act/aclafta2012372/s1.html

Financial services

Financial services may include reference to the following legislation:

- The Estate Agents Act and Regulations
- The Sale of Lands Act
- Australian Securities and Investments Commission Act 2001
- Corporations Act 2001
- Australian Securities and Investments Commission Regulations 2001
- Corporations Regulations 2001
- Banking Act 1959
- Privacy Act 1988
- Anti-discrimination Act 1991

OHS/WHS Legislation

Workplace safety may include reference to the following legislation:

- Work Health and Safety Regulation 2011
- Worksafe

In Australia, there is a raft of legislation that is based around the Model Work Health and Safety Act that is designed to ensure that workers and the greater community are not injured by business practices and that a safe work environment and practices are maintained at all times. Each state and territory have its own regulatory body that is responsible for enforcing and maintaining the health and safety laws in its jurisdiction. It is essential that all employee responsibilities that are required in your state and your industry are accessed and interpreted and included into daily work practices.

OHS/WHS Industry Codes of Practice

Industry codes of practice are a set of guidelines that when followed will ensure that the organisation is compliant with the relevant legislation in its jurisdiction. There are many codes of practice that are active in Australia at the moment, these are not legal requirements but are highly recommended as they are considered best practice and will ensure compliance with the law. Legislation can be very confusing and written in complex legal jargon where codes of practice provide simple strategies for ensuring a safe workplace can be maintained.

OHS/WHS National Standards

National safety standards are agreed on standards and benchmarks that have been set as an Australian Standard. It is essential that all national standards are known and applied to during daily work activities. Standards may be related to safety equipment and standard practices.

It is essential when planning and preparing for OHS/WHS policies and procedures to be to be made directly in line with the requirements of relevant OHS/WHS legislation, codes of practice and national standards. All employees should be trained in and made aware of all of their responsibilities in relation to working in a manner that ensures a safe workplace.

It will be necessary to ensure that methods are put in place to ensure that all policies and procedures are complied with throughout work activities.

There should be a system of observation, updated training, OHS/WHS safety meetings and consultation to ensure that all OHS/WHS needs are covered at all times.

Privacy

Privacy may include reference to the following legislation:

- The Privacy Act 1998, including:
    - The Australian Privacy Principles

It is essential that the client's privacy is maintained throughout all transactions and interactions and this can be done through complying with the needs of the Privacy Act at all times.

The Privacy Act 1988 (Privacy Act) is an Australian law that regulates the handling, collection, use, storage, and disclosure of personal information about individuals. This includes access to and correction of that information.

The Privacy Act includes:

- 13 Australian Privacy Principles that apply to the handling of personal information by most Australian Government agencies and private sector organisations
- Credit reporting provisions that apply to the handling of credit-related personal information that credit providers are permitted to disclose to credit reporting bodies for inclusion on individuals’ credit reports

The Privacy Act also:

- Regulates the collection, storage, use, disclosure, security and disposal of individuals' tax file numbers
- Permits the handling of health information for health and medical research purposes in certain circumstances, where researchers are unable to seek individuals' consent
- Allows the information commissioner to approve and register enforceable app codes that have been developed by an app code developer, or developed by the information commissioner directly
- Permits a small business operator, who would otherwise not be subject to the Australian privacy principles (apps) and any relevant privacy code, to opt-in to being covered by the apps and any relevant app code
- Allows for privacy regulations to be made[6]

[6] http://www.oaic.gov.au/privacy/privacy-act/the-privacy-act

Legislation and ethical and conduct standards relevant to estate agency operations, including legislative limitations on agency practice, are identified to ensure compliance with legislative and agency requirements

Ethical and conduct standards

In any industry, there are ethical and conduct standards that apply to working in that industry. Ethical and conduct standards that apply to estate agency operations are governed by:

- The Sale of Land Act and the Sale of Land (Public Auctions) Regulations, which set the rules and standards that apply to auctions, including:
    - Vendor bids
    - Auction rules
    - Information statement
    - Fictitious bids
    - Late bids
    - Collusive/disruptive practices
- The Estate Agents (Professional Conduct) Regulations, which accompany the Estate Agents Acts and set the standard of conduct expected of estate agents and agents' representatives, including relating to:
    - Knowledge of the law
    - Confidential information
    - Dispute resolution
    - Commissions
    - Instructions

- Fairness and honesty
- Potential conflict of interest
- Good practice
- Not induce breach of contract
- Ascertain information
- Communication of offers
- Bids and offers at public auctions of land

- The Competition and Consumer Act

Legislative limitations on agency practice

Legislative limitations on agency practice may include:

- License lending
- Commission sharing, and the required disclosures
- Conflict of interest
- Trust money

Ethical practices and standards

Ethical practices are those that are considered to be morally right, correct and fair; it is important that care is taken to ensure that actions taken within the real estate industry are ethical and there is a range of areas where ethical practices should be developed in including:

- Confidentiality of customer information
- Honesty
- Positive statements

- Consumer protection, fair trading and trade practices
- Privacy
- Anti-discrimination and equal employment opportunity
- Rights of employees
- Responsibilities of employers to make merit-based employment decisions

Confidentiality of customer information

When managing customer information, it is ethical to ensure that a range of steps is undertaken in order to maintain the confidentiality of this information.

All agency personnel have an ethical responsibility, to uphold the confidentiality of customer information and this can be achieved through:

- Effective management of client information
- Secure storage for client information
- Protective procedures and practices to maintain client confidentiality
- Ensuring staff are effectively training in methods used to maintain the confidentiality of client information

Honesty

It is essential that the agent works in an honest manner at all times and only provides honest information and feedback to the client.

Positive statements

When making positive statements to a client regarding real estate, it is important that the statement is honest, true and fair and does not mislead or confuse the client.

Consumer protection, fair trading and trade practices

The consumer protection Act sets out a range of actions that must be undertaken in order to ensure that consumer's rights are protected through a range of requirements including:

- Safety
- Warranties
- Refunds
- Returns
- Information provision

It is essential that all refunds, terms and conditions of quotations and cancellation fees are:

- Compliant with the requirements of the consumer protection act
- Are fair and ethical
- Are transparent
- Are communicated in a clear and detailed manner to consumers

All organisations must ensure that are compliant with all of the requirements of the Fair Trading Act 1989.

Fair trading is related to:

- Competition standards
- Complaints handling
- Transparency
- Honesty
- Integrity

The Trade Practices Act 1974 has been put in place to ensure that all of the actions that take place within the marketplace including the public sector are fair, safe and in line with all relevant industry codes of practice.

Anti-discrimination and equal employment opportunity

Within the each industry sector it is essential that all labour hire and employment terms meet the requirements of the anti-discrimination and equal employment legislation in order to ensure that all staff are treated equally and have the right to be employed in a safe and fair environment.

Relevant legislation includes:

- Anti-discrimination Act 1977
- Equal employment opportunity Act 1987

Rights of employees

The rights of employees under the EEO Law are to be treated in a fair and ethical manner that is free from discrimination.

Employees should not be bullied or treated differently due to a range of different factors including:

- Gender
- Sexual preferences
- Religious beliefs
- Age
- Political beliefs
- Race

- Age
- physical or mental disability
- Marital status
- Family or carer's responsibilities
- Pregnancy
- National extraction
- Social origin

Responsibilities of employers to make merit-based employment decisions

It is the responsibility of all employers, to ensure that they make merit-based employment decisions and are not swayed by their own personal opinion or discriminatory bias. This means that the most qualified person should be selected and their proven skills and knowledge should best match the position.

Licensing and eligibility requirements for licensed real estate agents, real estate representatives and other employees, including offences and penalties, are identified to ensure compliance with legislative and agency requirements

There are 4 key roles that are legally authorised to perform real estate functions. They include:

- Estate agent
- Agent's representative
- Principal agent and office in effective control
- Approved branch manager

Licencing and eligibility requirements for the various employees working in a real estate agency

Estate agent

A person (other than a corporation) shall not be eligible to be granted an estate agent's licence unless he is not less than 18 years of age and-

- He has:
    - Passed the prescribed courses of instruction or examination
    - During the 3 years prior to applying for a licence been engaged in:
        - Full-time employment as an agents representative for at least 1 year
        - Part time employment equivalent to 2-year full-time work in WA (Queensland doesn't currently have any experience requirements to become licensed)
    - Has held an estate agent's licence within the period of 5 years preceding the application
    - Has met any other requirements set out in regulations

Despite the above, a person is also eligible to be granted an estate agents licence if they:

- Have been licenced or otherwise authorised under the laws of another place or country
- Have an adequate knowledge of State estate agency laws

Agents representative

To be eligible to be an agent's representative you must:

- *Be at least 18 years old*

- *Have completed a course prescribed under the States Regulatory bodies requirements*

If you are starting work as an agent's representative for the first time, you must have completed either:

- *the following three units of competency as a minimum depending on your state:*
    - *CPPDSM4080A - Work in the real estate industry*
    - *CPPDSM4008A - Identify legal and ethical requirements of property sales to complete agency work*
    - *CPPDSM4007A - Identify legal and ethical requirements of property management to complete agency work*

or

- *the Certificate IV in Property Services (Real Estate)*

within the last five years.[7]

Principal agent and office in effective control/Approved *branch manager*

The manager of the day-to-day operations of an estate agency office, including principal and branch offices, must be a licensed estate agent.

The manager of the principal office may be the principal agent or officer in effective control or may report to the principal agent or officer in effective control.

An agent's representative who is new to the industry cannot manage an office. However, older agents' representatives approved by the States Licensing Authority before February 1995 to manage a particular branch office may continue to do so. The Licensing Authority must grant permission for an approved agent's representative to manage another branch.

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[7] https://www.consumer.vic.gov.au/licensing-and-registration/estate-agents/agents-representatives

Regardless of whether the manager of an office is an estate agent or an approved agent's representative, they can only manage one office at a time.[8]

[8] https://www.consumer.vic.gov.au/licensing-and-registration/estate-agents/running-your-business/office-management-and-staffing/managing-an-estate-agency-office

Key provisions of consumer protection and privacy legislation are identified in relation to agency practice

In order to work effectively in the real estate industry, you will need to have knowledge and understanding of consumer protection and privacy legislation in relation to agency practice.

Consumer protection for real estate is in relation to:

- It is unlawful for real estate agents to:
    - Intentionally mislead you
    - Lead you to a wrong conclusion or impression
    - Give you a false impression
    - Leave out or hide important information (e.g. In fine-print disclaimers)
    - Make false or inaccurate claims[9]

Australian Consumer Law and Fair Trading Act 2012

- The main purposes of this Act are—
    - To promote and encourage fair trading practices and a competitive and fair market;
    - To protect consumers;
    - To regulate trade practices;
    - To provide for codes of practice;
    - To provide for the powers and functions of the director of consumer affairs including powers to conciliate disputes under this act and powers

[9] https://www.accc.gov.au/consumers/health-home-car/real-estate

to carry out investigations into alleged breaches of this act;

- To promote uniformity with the consumer laws of other jurisdictions through the interpretation and application of the Australian Consumer Law in Australia consistently with those laws;
- To regulate certain businesses; [10]

Key principles of consumer protection and privacy legislation

Australian Consumer Law and Fair Trading Act is the Victorian legislation that forms a symbiotic relationship with the Commonwealth Competition and Consumer Act.

- The ACL offers consumer protections in the areas of:
  - Unfair contract terms, covering standard form consumer contracts;
  - Consumer rights when buying goods and services;
  - Product safety;
  - Unsolicited consumer agreements covering door-to-door sales and telephone sales; and
  - Lay-by agreements[11]

The Commonwealth Privacy Act contains the following Australian Privacy Principles that apply to parts of the private sector, including real estate operations:

- Australian Privacy Principle 1 — open and transparent management of personal information
- Australian Privacy Principle 2 — anonymity and pseudonymity
- Australian Privacy Principle 3 — collection of solicited personal information

[10] http://www.austlii.edu.au/au/legis/vic/consol_act/aclafta2012372/s1.html
[11] https://www.act.gov.au/browse/topics/law-and-justice/consumer-rights

- Australian Privacy Principle 4 — dealing with unsolicited personal information
- Australian Privacy Principle 5 — notification of the collection of personal information
- Australian Privacy Principle 6 — use or disclosure of personal information
- Australian Privacy Principle 7 — direct marketing
- Australian Privacy Principle 8 — cross-border disclosure of personal information
- Australian Privacy Principle 9 — adoption, use or disclosure of government related identifiers
- Australian Privacy Principle 10 — quality of personal information
- Australian Privacy Principle 11 — security of personal information
- Australian Privacy Principle 12 — access to personal information
- Australian Privacy Principle 13 — correction of personal information

Purpose of trust funds and the key legislative controls on trust funds relevant to authorised employees are identified to ensure compliance with legislative and agency requirements

Nature of trust funds and key legislative controls on trust funds

It will be necessary to ensure that all agents comply with legislative requirements and agency practice when the process of managing deposit monies including receipt of funds, appropriate records, banking and the release of funds. Deposit monies will be placed in a trust fund and released to the seller on the date of settlement.

What is the purpose of trust funds?

Trust money is the money received by an estate agent as a stakeholder or on behalf of another person (principal or third party). It must be in an account in an approved financial institution and recorded in the agency trust accounting records.

Trust funds would include deposits on sales, residential bonds paid in cash, rents and prepaid advertising.

What are the key legislative controls on trust funds?

The following are the key controls on trust funds:

- Must be paid into a trust account in an approved financial institution
- Agents' representatives who receive trust money must immediately pass this to the agent, who in turn will pay it into the trust account
- Agents are not permitted to withdraw funds from this account except in the form of trust account cheque or EFT.
- Trust funds must not be used for any other purpose

- Trust money can only be released to pay the person legally entitled to the money

Trust accounting in real estate

At its most basic level, Trust Accounting is simply bookkeeping of trust accounts in accordance with state requirements. These requirements vary from state to state, but they have a few rules in common. Namely, there is to be no commingling of client funds with the lawyer or law firm's funds, and maintaining accurate records is a must.

Trust Accounting has some very specific recordkeeping requirements, which are used to maintain accurate information for both the attorney and the client. Trust Accounting requires:

- *Tracking of all deposits and disbursements made through the account.*
- *A detailed ledger that notes every monetary transaction for each particular client.*
- *An account journal for each account, tracking each transaction through the account.*
- *Monthly reconciliation of the account.*

Only certain type of funds can be placed into a trust account. These include:

- *Settlement Funds such as those obtained through a Personal Injury case or a Real Estate transaction.*
- *Unearned Income refers to monies paid to the lawyer or law firm before services have been rendered. Fees, Cost Advances, and Retainers are all examples of unearned income.*
- *Advances for Costs are similar to unearned income, except they are to be used specifically for costs associated with managing the case.*
- *Judgment Funds, similar to settlement funds, are awarded by the court.*

- *Third-Party Funds such as those obtained from the sale of client property or monies that are to be paid to a third-party for services rendered.*[12]

Deposit monies

Deposit money may refer to:

- The capacity of an agent to hold
- The capacity of an agent to release to the seller
- Procedures for receipt and banking

Receipt of deposit monies

The process for receiving trust monies for the deposit involves the following actions:

- Ensure the money is deposited into the trust on the same business day that it is received
- Complete a formal trust account receipt
- Create a duplicate receipt for agencies own records

Recording, processing and disbursing trust monies

The process for recording trust monies received must be contained on a formal trust receipt that contains the following information:

- Agents name
- Payee name
- Reason for monies received

[12] https://www.cosmolex.com/blog/the-basics-of-trust-accounting/

- Numeral recording of monies received
- Method that money was received by

When processing trust funds for withdrawal or disbursement, it will be necessary to:

- Ensure it is only withdrawn or distributed when you are authorised to do so
- Funds may only be withdrawn or disbursed for the purpose that it was to be withdrawn or used for

Monies must be disbursed directly from the trust account it is important to note that it is illegal to make transfers to a general account.

Disbursements must be negotiated and recorded, and a record of all disbursements must be maintained for at least 5 years.

Disburse the deposit to the seller on the date of settlement

The deposit will need to be formally released on the day of settlement and disbursed into the trust account of the vendor following an authority from the purchaser and the requirements of managing trust funds.

Roles and responsibilities of government agencies and industry bodies are identified in relation to agency practice

There are several government agencies and industry bodies that relate to agency practice.

Roles and function of industry bodies

These industry bodies include:

- Real estate Institute of Australia:
    - Has produced national code of conduct
- Real estate Institute of Victoria:
    - Represents Victorian estate agents.
    - Its role is to lead the industry, promote the delivery of professional services by members and ensure the integrity, credibility and ethical standards of the industry.
    - Provides education and training
- Australian livestock & Agents association:
    - To ensure that members are kept informed of changes to and requirements of the Estate Agents Act
    - To keep members up to date on industry trends
- Australian Property Institute:
    - To set and maintain the highest standards of professional practice, education, ethics and discipline for its members

Roles and functions of government regulatory agencies

The roles and functions of the government regulatory agencies include:

- State licencing regulatory bodies:
  - grants licenses and approvals to real estate practitioners
- Consumer Affairs or Fair Trade Commission:
  - Administers and enforces the provisions of the state Real Estate Acts
  - Includes a complaints- Estate Agent resolution service
  - Conduct's inspections and audits estate agents trusts accounts and related records
- State Civil and Administrative Tribunal:
  - Review the decisions made by the Regulatory Licencing Body
  - Conduct enquiries referred by Regulatory bodies
  - Determine disputes referred by industry bodies
  - Hear appeals
  - Impose penalties
- Estate Agents Council:
  - To regulate the estate industry

Personal understanding of legislative requirements is assessed and verified with relevant people

As we have discussed through this resource so far, you MUST have an excellent personal understanding of the legislative requirements relevant to your role.

If you were uncertain about any legislative requirements, you will need to talk to the relevant people to clarify the issues you are having.

Relevant people will vary depending on your agency, but are likely to consider:

- The estate agent
- The principal agent /officer in effective control
- The approved branch manager

Situations in which specialist advice is required are identified, and sources of appropriate advice are determined in line with agency practice

Sources of specialist advice relating to real estate operations

There may be times where you feel you need specialist advice. If this is the case, then there are internal and external sources that you could consider.

Specialist advice may be obtained from:

- Within the agency, by speaking with:
    - Experienced real estate agents
    - Supervisors
    - Colleagues\mentors
- Or outsider the agency from:
    - Government agencies
    - Industry bodies
    - Other professionals such as solicitors, conveyancers and values.

You may require specialist advice:

- In circumstances that are new to you
- In any situations where there are complications
- If you are unsure of the legislative or regulatory requirements of a task.

Risks and risk management strategies

- Risks could consider:

- Personal injury
- Environmental hazards

- Risk minimisation strategies may include:
    - Implementing the hierarchy of control
    - The following are some good practices that Agents should follow to build safe work procedures for property inspections:
        - Notify neighbours that an inspection is occurring
        - Retain a clear path to the exit, such as standing in a doorway while inspecting a room
        - Make an excuse and leave the site immediately if the enquirer becomes aggressive or makes the agent feel uncomfortable in any way
        - Where practical, conduct inspections during the day, but if evening inspections are necessary, ensure you are accompanied
        - Turn on all of the property's internal and external lights if a night inspection is unavoidable, and leave your vehicle's parking lights on for the duration of the inspection
        - Utilise your coded phone message or alarm device if at any stage you feel you are at imminent risk

TOPIC 3 – MODEL ETHICAL PRACTICE

Ethical and conduct standards, including penalties for breaches, are identified and interpreted to ensure compliance with legislative requirements and industry and agency practice & agent's liability for breach of contract and negligence is identified in the context of legislative and agency requirements

Every industry has legislation that governs it and its actions. From this Act or legislation come regulations, standards and codes of practice and conduct.

Codes of conduct

In any industry, there are general codes of conduct that are demanded by both the regulators and the clients. Industry codes of conduct may relate to:

- Ethical behaviour
- General business operations
- Property sales and management

The following is an example of the Western Australian Code of conduct. Real Estate and Business Agents Act 1978 (the Act) and its accompanying Regulations and Code of Conduct (the Code) regulate real estate practice in Western Australia. The Department of Commerce administers the Act and Code and is the Regulator.

The following sections of the Code of Conduct reflect the ethics expected by the Regulator and demanded by consumers. ***4. General duty to principal*** *An agent must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.* ***5. Certain inducements prohibited*** *(1) An agent must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency.*

(2) An agent must not knowingly induce or attempt to induce a person to enter into an agency contract which would make that person liable to pay commission to more than one agent in relation to a sale or a lease of any real estate or business. ***7. Duty to behave fairly*** *(1) An agent must act fairly and honestly.* *(2) An agent must not knowingly mislead or deceive any parties in negotiations or a transaction.* *(3) An agent must not engage in harsh or unconscionable conduct.* ***9. Standard of service*** *An agent must exercise due skill, care and diligence.* ***10. Duties as to details of the transaction*** *(1) Prior to the execution by the agent's principal of any contract relating to the sale or lease of any real estate or business the agent must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained.* *(2) If an agent ascertains a fact which is material to a transaction in which the agent's principal is involved the agent must promptly communicate that fact to any person who may be affected by it unless it is clear that person was already aware of that fact.* *Code of Conduct for Agents and Sales Representatives 2011* *The maximum penalty for failure to comply has increased to $50,000.*[13]

Conflicts of interest

A conflict of interest can come through one of the following:

- Financial interest - A financial conflict of interest is one where the situation has the potential for an agent to make a financial gain. This financial gain can be either a direct or an indirect gain (for example an agent purchasing a property they have listed themselves).
- Personal interest - A personal conflict of interest is one where an agent may further a personal interest but receives no financial benefit from the exchange (for example the agent assists a family member or friend to get business, or recommends a tenant who is a personal acquaintance).
- Business interest - A business conflict of interest is one where the agent gains benefit to their business (for example the agent discourages an owner from

[13] https://www.commerce.wa.gov.au/sites/default/files/.../ethicsagentsmanual2012.pdf

leasing a neighbouring property to a competitor.).

- Shareholder or officer of a company - A shareholder or officer conflict of interest is one where the interests of a company the agent is associated with competes with a client's interests.

- Beneficiary of a Trust - A beneficiary of a trust conflict of interest is one where the interests of a Trust of which an agent is a beneficiary compete with the interests of the client.

If you are uncertain about a potential conflict of interest when working with clients, you need to disclose these.

The requirement for an agent to disclose any conflict of interest is a principle of common law and is reinforced by Section 64 of the Act and by Articles 12 and 18 of the Code of Conduct, previously noted. Section 64 (1) and (2) of the Real Estate and Business Agents Act 1978 *(1) An agent shall not have, directly or indirectly, any interest, other than in his capacity as an agent, in any transaction in which he acts as an agent unless his principal has given prior written consent thereto.* *(2) A sales representative or other person in the employment of an agent shall not have, directly or indirectly, any interest, other than an interest that exists by virtue only of his employment, in any transaction in which the agent acts or purports to act unless the agent's principal has given prior written consent thereto.* [14]

The most serious breach in an agents duty is to not make a disclosure when there is a conflict of interest with the principal.

You have an obligation to disclose a conflict of interest when your agency has listed a property or business for sale or lease and:

- *The agent or an employee of the agency wishes to buy, rent or otherwise take an interest in that property*

- *The spouse, relative, friend or close associate of the agent or of an agency employee wishes to buy or rent that property*

[14] https://www.commerce.wa.gov.au/sites/default/files/.../ethicsagentsmanual2012.pdf

- *The buyer or tenant was acting on behalf of a company, trust, or any other entity with which the agent or their employees had a close association*[15]

Information on your code of conduct and conflicts of interest can be sourced from:

- Western Australia - Code of conduct for agents and sales representatives https://www.commerce.wa.gov.au/publications/code-conduct-agents-and-sales-representatives
- South Australia - Real Estate Code of Conduct https://www.reisa.com.au/publicinfo/real-estate-code
- Victoria - Professional conduct and obligations – estate agents https://www.consumer.vic.gov.au/licensing-and-registration/estate-agents/running-your-business/professional-conduct/professional-conduct-and-obligations
- New South Wales - Code of Practice https://www.reinsw.com.au/REINSW_Docs/REINSW_Code_of_Practice_web.pdf
- Queensland - Real Estate Agency Practice Code of Conduct) https://www.legislation.qld.gov.au/.../P/PropAgMoDREAR01_01A_090701.pdf
- Tasmania - Code of Conduct for Property Agents https://ablis.business.gov.au/TAS/pages/a8fef0e0-9fd2-4470-9a1d-e6045503dddd.aspx
- Northern Territory - Rules of Conduct for Licensed Agents https://ablis.business.gov.au/NT/pages/818a579a-4305-4c96-80d5-f54646a532c6.aspx
- ACT - Agents Regulation 2003 www.legislation.act.gov.au/sl/2003-

[15] https://www.commerce.wa.gov.au/sites/default/files/.../ethicsagentsmanual2012.pdf

38/current/pdf/2003-38.pdf

Ethical practices are those that are considered to be morally right, correct and fair; it is important that care is taken to ensure that actions taken within the real estate industry are ethical and there is a range of areas where ethical practices and behaviours should be developed.

Confidentiality of customer information

When managing customer information, it is ethical to ensure that a range of steps is undertaken in order to maintain the confidentiality of this information.

All agency personnel have an ethical responsibility, to uphold the confidentiality of customer information and this can be achieved through:

- Effective management of client information
- Secure storage for client information
- Protective procedures and practices to maintain client confidentiality
- Ensuring staff are effectively training in methods used to maintain the confidentiality of client information

Offences and penalties under the legislative framework

There are several types of offences and penalties for breaches that are applicable to real estate agents, agencies and agents' representatives?

These may include:

- In the case of minor breaches of the Estate Agents Act or Regulations, including the Professional Conduct Regulations and other legislation such as the Sale of Land Ace or Regulations, estate agents will be contacted, advised on how to rectify the problem and monitored I future.

- For serious breaches, an investigation will be conducted, and the following actions may occur:
    - Issue of a warning
    - Acceptance of a written undertaking that the conduct will not reoccur
    - Legal proceeding before the Occupational and Business Regulation List of VCAT of a court.
    - Referral to the police in the case of serious criminal activity, such as theft of trust money.
    - Other penalties may include:
        - Cancel/suspension of the license
        - Conditions or limitations imposed on license
        - A fine not exceeding $5000
- For breaches of section 30 of Schedule 2 of the Competition Consumer Act, penalties may include criminal prosecution and a fine of up to $1,100,000 for a company and $220.000 for an individual.

In the context of legislative and agency requirements, the liability of an agent in breach of contract or negligence may result in an agent losing their licence; the public can also take legal action against an agent for loss or damage.

Personal understanding of ethics and conduct standards required for good agency practice is verified with relevant people to ensure compliance with legislative requirements and industry and agency practice

In order to meet the standards expected of a good agency or what might be considered good agency practice there are certain ethics and conduct standards that you need to be aware of. These include:

- Ethical standards may include:
    - Honesty
    - Trustworthiness
    - Fairness
    - Respect
    - Responsibility
    - Integrity
- The Estate Agents (Professional Conduct) Regulations 2008, including:
    - Regulation 6 – Knowledge of the law
    - Regulation 7 – Confidential information
    - Regulation 8 – Dispute resolution
    - Regulation 9 – Commissions
    - Regulations 10 and 18 – Instructions
    - Regulations 11 and 19 – Fairness and honesty
    - Regulations 12 and 20 – Potential conflict of interest
    - Regulations 13 and 21 – Good practice
    - Regulations 14 and 22 – Not induce breach of contract

- Regulations 15 and 23 – Ascertain information
    - Regulations 16 and 24 – Communication of offers
    - Regulations 17 and 25 – Bids and offers at public auctions of land
- Competition and Consumer Act
- Privacy Act

The following points are the ethical and conduct standards you should abide by as a real estate agent or agents representative to ensure compliance with legislative and agency requirements?

- Ethical and conduct standards that apply to estate agency operations are governed by:
    - The Sale of Land Act and the Sale of Land (Public Auctions) Regulations, which set the rules and standards that apply to auctions, including:
        - Vendor bids
        - Auction rules
        - Information statement
        - Fictitious bids
        - Late bids
        - Collusive/disruptive practices
    - The Estate Agents (Professional Conduct) Regulations, which accompany the Estate Agents Acts and set the standard of conduct expected of estate agents and agents' representatives, including relating to:
        - Knowledge of the law
        - Confidential information
        - Dispute resolution

        - Commissions
        - Instructions
        - Fairness and honesty
        - Potential conflict of interest
        - Good practice
        - Not induce breach of contract
        - Ascertain information
        - Communication of offers
        - Bids and offers at public auctions of land
    - The Competition and Consumer Act

TOPIC 4 – IDENTIFY INDUSTRY EMPLOYMENT REQUIREMENTS

Industry employment requirements are identified and interpreted to ensure compliance with legislative requirements and agency practice

There are laws which protect employees from unscrupulous behaviour of employers. This area of law is known as 'Industrial Relations'. Let's look more closely at the factors that determine pay and employment conditions in the real estate industry.

Employment and industrial relations

The principal agent or officer in effective control is responsible for ensuring that appropriately qualified people work in an agency. This is a key aspect of managing an estate agency office.

- An agency can only employ estate agents and agents' representatives to carry out the estate agency work of:
    - Buying, selling and leasing properties or businesses
    - Negotiating
    - Collecting rent
- Before they can start work, each employee must receive written authority from the principal agent or officer in effective control, setting out the functions they can perform [16]

Industrial relations is the management of work-related obligations and entitlements between employers and their employees, and may include:

[16] https://www.consumer.vic.gov.au/businesses/licensed-businesses/estate-agents/run...

- The Fair Work Act 2009
- The Fair Work Commission
- The Fair Work Ombudsman, a statutory office created by the Fair Work Act 2009. They promote harmonious, productive and cooperative workplace relations and ensure compliance with national workplace laws
- Pay rates and pay equity

Enterprise agreements

An enterprise agreement sets out the minimum conditions of employment for employees engaged in particular types of work in the same way as an award. However, unlike most awards, enterprise agreements are specific to a particular enterprise or project.

Enterprise agreements are negotiated voluntarily between the two parties involved, that is, the employer on the one hand and either the individual employees concerned or a union on behalf of those employees on the other.

Enterprise agreements may be negotiated under either the state or federal system.

Awards

Despite the availability of enterprise bargaining, most people in Australia still work under an industrial award that establishes the terms and conditions by which they are employed. The real estate industry award is determined in accordance with the Commonwealth Industrial Relations Act 1996 (Cth).

Depending on your specific role in real estate, you are very likely to be covered by one of two awards: The Real Estate Industry (State) Award 2003 applies to the majority of people employed in the industry. The Real Estate Industry (Clerical and Administrative)(State) Award 2002 covers additional real estate employees. Other awards include:

- *Real Estate Industry (State) Training Wage Award*
- *Real Estate Industry (State) Superannuation Award*
- *Real Estate Valuers (State) Consolidated Award (for real estate valuers)*
- *Clerical Industry (State) Training Wage Award*
- *Sundry awards that apply to cleaners, caretakers, gardeners and so on.*

Real Estate Industry (State) Award 2003

This Award covers salespeople, property managers, property officers, licensees-in-charge and commission-only salespeople who work in the industry. It sets out the minimum terms and conditions under which they may be employed.

In broad terms, your employment conditions are established in two ways: by the award and by statute. For example, rates of pay are provided by the award itself, while holiday entitlements and long service leave are stipulated in other particular pieces of legislation.

Note that the award conditions, provisions and entitlements cover many issues that impact on your day-to-day activities and work arrangements. These include such considerations as:

- *Job classifications*
- *Rates of pay*
- *Rostered days off*
- *Locomotion allowance*
- *Telephone allowance*
- *Employment agreements*
- *Payment of expenses*
- *Meal breaks*
- *Supply and use of mobile phones*
- *Requirement to wear uniforms*
- *Salesperson's commission statement*

- *Sick leave*
- *Public holidays*
- *Jury service*
- *Compassionate leave*
- *Maternity leave*
- *Annual holidays and loading*
- *Long service leave*
- *Superannuation*
- *Grievance procedures*
- *Termination of employment*
- *Redundancy arrangements and severance pay*[17]

[17] lrrpublic.cli.det.nsw.edu.au/lrrSecure/Sites/Web/propserv/lo/.../7709_reading.doc

Employee and employer rights and responsibilities regarding conditions of employment are identified and interpreted to ensure compliance with legislative requirements and agency practice

Employee and employer rights and responsibilities

In your real estate agency both you as the employee and your employers have rights and responsibilities. You will need to identify these and determine whether they are compliant with legislative requirements and agency practice.

The following are typical employer and employee responsibilities and rights:

- Employer responsibilities:
    - Estate agents are bound by 2 categorises of responsibility to their employees and, in particular, to agent's representatives. The first category of duties and responsibilities applies to the requirements of the Estate Agents Act and is specific to the real estate industry. It includes the responsibilities that are outlined under sections 47, 62 and 29B. The second category of responsibility relates to the normal contractual relationship that exists between an employer and employee.
- Conventional employment contractual obligations:
    - An employment contract between an estate agent and an agent's representative is a service contract. Under this types of contract, the estate agent retains the right to control the way that the agent's representative works, and is liable for the activities performed in the work of the agent's representative.
    - Under the *Fair Work Act 2009* (Cwlth), all real estate employees (and, in fact, all employees in Australia) are entitled to a set of minimum employment standards that cannot be traded away to the detriment of

the employee. These 10 standards are known as the National Employment Standards (NES).

Workplace health and safety roles and responsibilities

You also have rights and responsibilities under Health and Safety in your agency.

All people and groups that are involved in the WHS consultation process should be made aware of their individual responsibilities in relation to WHS consultation. A clear understanding of all of the rights responsibilities and duties of all individuals and parties involved in the consultation process should be had by all people involved in the consultation process so that consultation may be effective.

The duties, rights and responsibilities of the following groups will need to be documented and communicated to all parties within the consultation process include those of the:

- Employees
- Management
- WHS representatives
- WHS committee members
- Employers
- WHS specialists
- WHS regulatory bodies
- Other relevant stakeholders

Duties of the Employer: It is the duty of the employer to provide a safe and secure workplace, adequate training, consultation, information and safe work practices and procedures.

Duties of the Employee: Employees are required to conduct their own work safely, participate in WHS consultation, attend WHS training and follow all WHS policies and procedures in the workplace.

Management: Must follow all of the same requirements as employees but may also be required to organise training and disseminate information and coordinate the collection of WHS information within the workplace.

WHS representatives: are elected by their colleagues to formally represent the workforce in matters of WHS within the workplace. WHS representatives act as the voice for the workers and take issues and ideas regarding WHS to management within an organisation. It is important that all relevant work groups are represented by the WHS representatives and their own diversity should mirror that of the workforce.

WHS committees: This is a WHS management team that should be made up half and half of employees and management. WHS committees are put in place to have an active team working on improving and managing WHS in the workplace.

Each of the specific, roles, responsibilities and duties of all of the key participants in the management of WHS should be clearly documented and shared with all other parties. In order for the management of WHS procedures to be effective, it is important that this information is transparent.

Effective communication strategies are employed to establish rapport with clients, determine client needs, and provide accurate advice and follow-up services in line with agency practice

Communication process, strategies and techniques

There are several strategies that can be used to improve communication. These include:

- **Active listening** - Active listening is a communication technique that ensures that you are fully engaged in the conversation. The principles of active listening include:
    - Listening carefully
    - Nod head to encourage the person to continue speaking at appropriate intervals
    - Make eye contact
    - Smile
    - Be present in the conversation
- **Being non-judgemental** - Judgment is the act of taking a piece of information and looking at it in a negative light against another person. It is important to ensure that own attitudes do not cloud clear decision making and reactions. All people are different, and instead of judging each other it is much more effective to attempt to understand and see another person's point of view even if it is different than your own.
- **Exploring problems** - When problems arise, it is important that they are explored in order to determine the cause of them and to seek understanding and possible solutions.
- **Expressing an individual perspective** - When providing service to customers, it is

important to express your own opinion in relation to questions that they ask in order to provide a non-biased and invited perspective; this can aid clients in developing trust and to enable efficient and considered decision making.

- **Providing sufficient time for questions and responses** - It is important that when questions are asked, sufficient time for clients to ask questions and provide responses so that they feel listened to and that their opinion and needs are being taken into consideration throughout the provision of service.
- **Reflective responses in conflict situations** - In the case of conflict situations, it is important to remain reflective rather than responsive and to consider the cause of the conflict, your own actions and the feelings of the other people within the conflict. This can help in turning a conflict situation into a positive experience for the client and the agency.
- **Using appropriate words, behaviour and posture** - It is important to ensure that professional and appropriate behaviour works and posture are used throughout the provision of customer service. All of the actions that we take will impact on the way that we are perceived, and it is important to appear attentive, professional and interested at all times.
- **Using clarifying and summarising questions** - Summarising questions are those that contain a summary of what we know as a basis of what will be asked next. Clarifying questions are those that seek to confirm a piece of information that has been provided. Summarising can be an effective tool in customer service for a number of reasons including:
    - Aiding in clarification of decisions
    - Revision of understanding and progress so far
    - To aid in determining client understanding
    - To assist in focusing and directing client understanding
    - To aid in decision making

- **Using clear and concise language** - Language that is clear and concise is language that is unambiguous and uses the required amount of words to explain itself.
- **Using culturally appropriate communication** - It is essential that all communications with clients are culturally appropriate in order to ensure that clients will not be offended or made to feel uncomfortable and in an attempt to maintain professionalism.
- **Using plain English** - The use of plain English involves clear and simple sentences and the use of common working instead of specific terminology. The use of plain English can reduce the chance of confusion and aid the client in feeling comfortable in their understanding of what is being discussed. When using plain English:
    - Use correct terminology
    - Be straight to the point
    - Use facts
    - Keep sentences short
    - Include only relevant information
    - Consider the order in which information is given
- **Using verbal and non-verbal communication** - It is important to consider both verbal and non-verbal communication throughout conducting service with customers must be considered, and this may include:
    - Tone
    - Sound
    - Posture
    - Hand gestures
    - Facial expressions

Appropriate Rapport

Rapport is the feeling of kinship and trust that can be established between people, and appropriate rapport means that these feelings remain within the confines of a professional relationship with clients.

Appropriate rapport relates to use of techniques that:

- Establish and build confidence and trust in the agency and its representatives
- Make the buyer feel valued
- Promote and maintain an effective relationship with the buyer

Two-way communications

It is important that two-way communications are encouraged and allowed, two-way communications are those that allow both parties to be heard, have input and receive information. Working together with people rather than dictating to them is most likely to result in a good and safe outcome for all involved.

Personal presentation and professional image are assessed for compliance with industry and agency norms

When you present yourself to a client, you are in fact representing your employment organisation, and therefore it may be a contractual requirement that you uphold the personal dress and presentation requirements of the organisation in order to ensure that the integrity of the brand and image of the organisation is maintained.

It is also important to consider what your personal dress and presentation are communicating to clients, customers and other personnel on site. People's perception of quality and capability is closely linked with appearance and presentation.

The presentation can communicate:

- Professionalism
- Perceptions of capability
- Perceptions of ability
- Perceptions of Trustworthiness

There are usually professional standards of personal presentation and image that you will need to adhere to whilst working in a real estate agency. You should look at yourself in the mirror and align yourself to these expectations.

If you are uncertain about the expectations, you should check your agencies policies and procedures for presentation standards and personal appearance. If you are still uncertain, talk to your principal or another real estate agent for clarification.

Personal knowledge and skills in providing real estate services are assessed against industry competency standards and other relevant benchmarks to determine continuing training needs and priorities

Continued training needs for agents and agents' representatives

Good learning and information skills are essential for successful professionals in the workplace. Early in your career, you must study a huge volume of information, simply to become effective. As you become increasingly successful, you'll need to process large volumes of documents, data and reports, just to keep up-to-date in your field.

The main reason for all training is to learn something new or improve a skill. But what determines how much you learn and how successful the training is? Often it's the effort you put into it. We attend training programs for all sorts of reasons. Think about what you want to gain from the program. Certainly, you'll learn skills you need to do your job better, but what other benefits are there? We might want to upgrade our skills, learn new things, or take longer-term training to change careers.[18]

Depending on your level of previous experience, you may be assigned a mentor in the first few weeks on the job. Feedback on how well you understand the job will be gained in part in this mentoring process. Most agencies have regular staff appraisals where you'll be given feedback in relation to how well you perform your tasks. This feedback will come to you directly from external sources e.g. customers and internally from your supervisors and colleagues. The precise methods employed to evaluate your performance, and the recording of that information are likely to be detailed in your organisation's policies and procedures along with time frames for these sessions. Most commonly they are yearly, however in some areas, where KPI's carry crucial safety factors they may occur more often, quarterly or half yearly.

How you perform your tasks and the way you conduct yourself is in itself a means of promoting your agency. The impression you leave people with is the impression they will

[18] http://www.primediary.com/learning-skills

take away with them about your agency. Reviews help you to understand your role in the agency and how you fit into the bigger corporate picture. Generally, feedback for all staff is gained and given to allow you to make informed choices about your career, now and in the future.

Why should you create a personal development plan?

Personal development planning means creating opportunities to think through, in a structured way, questions such as:

- What do I really want to achieve from life?
- What kind of person do I want to be?
- Am I clear about my personal goals and ambitions?
- Am I making the right decisions to get me where I really want to be?
- Am I in charge of my life and my studies - or am I just hoping it all will work out somehow?

Many employers now expect employees to understand their own performance - and to know how to adapt to meet times of increased workload, stressful situations or conditions of change.

Employees are often expected to show personal commitment to their own professional development, actively seeking out information, training and events that will keep their skills and knowledge up-to-date. Knowing how to learn, and how you learn best, will be invaluable in the workplace. You will need to assess your skills and knowledge against competency standards, KPI's and other benchmarks to see where you might need further training or support.

Tools and skills you can use to ensure you plan, schedule, organise and undertake your work-related tasks effectively

Tools and skills may include:

- Self-management skills to organise own work, deliver quality customer service and effectively manage competing demands
- Planning, organising and scheduling skills to undertake work-related tasks such as inspecting properties
- Calendar/diary/online calendar or diary

Opportunities for continuing training to maintain currency of competence and develop specialist and advanced skills and knowledge are identified, planned and applied in line with agency practice

Agents and agents' representatives need to continue learning over the lifespan of their real estate agent careers to maintain currency of competence and develop specialist and advanced skills and knowledge.

Continuing education and training is essential for real estate practitioners. To maintain a competitive edge, clients must be confident that the people they are dealing with have been trained in the most recent industry developments are continually improving their performance and updating their skills.

There is a range of programs designed specifically for the real estate industry. They include:

- Short courses – in sales, property management, auctioneering, management, documentation, ethics, business, finance, strategic planning and more.
- Certificate III in Property Services (Agency)
- Certificate IV in Property Services (Real Estate)
- Diploma in Property Services (Agency Management)
- Some RTO’s also offer other training and professional development programs that reflect the broad range of real estate activities.

SUMMARY

Now that you have completed this unit, you should have the skills and knowledge to enable a new entrant to the industry to gain a basic understanding of the industry and work ethically and effectively in a real estate agency.

If you have any questions about this resource, please ask your trainer. They will be only too happy to assist you when required.

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