

Western Australia

Real Estate and Business Agents Act 1978

**Real Estate and Business Agents (General)  
Regulations 1979**



## **Real Estate and Business Agents (General) Regulations 1979**

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## **Real Estate and Business Agents (General) Regulations 1979**

### **1. Citation**

These regulations may be cited as the *Real Estate and Business Agents (General) Regulations 1979*<sup>1</sup>.

### **2. Terms used in these regulations**

In these regulations, unless the contrary intention appears —  
***calendar year*** means a period of 12 months beginning on 1 January;

***CPD activity*** means —

- (a) in relation to the calendar year 2009 or any subsequent calendar year, an educational activity approved for that calendar year in accordance with regulation 4AA(1); and
- (b) in relation to either of the calendar years 2007 and 2008, an educational activity approved for that calendar year in accordance with regulations in force at the time of approval;

***CPD subject*** means a subject listed in Schedule 1A;

***dwelling*** has the same meaning as it has in section 131L of the Act;

***educational activity*** means —

- (a) attendance, including by means of audiolink or videolink, at a specific training course provided by a

- specific body or person and successful completion of any assessment requirements for that course; or
- (b) attendance, including by means of audiolink or videolink, at a specific seminar presented by a specific body or person and successful completion of any assessment requirements for that seminar; or
  - (c) viewing of a specific recording, and successful completion of any assessment requirements for that viewing; or
  - (d) participation in a specific course of study, or a specific component of a course of study, and successful completion of any assessment requirements for that course or component;

**mandatory CPD activity**, in relation to the calendar year 2009 or any subsequent calendar year, means a CPD activity for that year which the Board has specified as a mandatory CPD activity for that year in accordance with regulation 4AA(3)(b);

**mandatory CPD subject**, in relation to either of the calendar years 2007 and 2008, means a CPD subject which is a mandatory subject for that calendar year under or in accordance with regulations in force with respect to that calendar year;

**point value** means —

- (a) in relation to a CPD activity approved for the calendar year 2009 or any subsequent calendar year, the point value specified under regulation 4AA(1)(b); and
- (b) in relation to a CPD activity approved for either of the calendar years 2007 or 2008, the point value specified or determined in accordance with regulations in force at the time of approval;

**record** means a record under section 69(1)(b) of the Act;

**register** means the register referred to in regulation 7(b);

**registered training provider** has the same meaning as in section 5(1) of the *Vocational Education and Training Act 1996*;

**relevant day**, for a calendar year, means —

- (a) for the calendar year 2009, the day which is 14 days after the day on which regulation 5 of the *Real Estate and Business Agents (General) Amendment Regulations 2009* comes into operation; and
- (b) for the calendar year 2010 and each subsequent calendar year, 1 January in that calendar year;

**regulated person** means a licensee to whom regulation 4AB applies or a sales representative to whom regulation 4AC applies;

**working day** means a day that is not a Saturday, Sunday, public holiday or public service holiday.

*[Regulation 2 inserted in Gazette 25 Jun 1996 p. 2918; amended in Gazette 7 Feb 2003 p. 385; 28 Dec 2007 p. 6403-4; 17 Apr 2009 p. 1319-21.]*

**3. Common seal**

- (1) The common seal of the Board shall be in the form of a circular embossment inscribed with the passage “Real Estate and Business Agents Supervisory Board —Western Australia” around its circumference and the coat of arms of Western Australia in its centre.
- (2) The common seal shall be kept in safe custody by the Registrar and shall not be applied to any document except pursuant to a resolution of the Board and upon the common seal being so applied the document shall be signed by the Chairman and either the Registrar or another officer nominated by the Board for that purpose.
- (3) Every resolution to apply the common seal to a document shall be recorded in the minutes of the meetings of the Board.

**3A. Prescribed duty for purposes of section 4(4)(d)**

For the purposes of section 4(4)(d) of the Act the prescribed duty is collecting a payment on behalf of the owner of premises

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from a person in respect of the right of that person to occupy the premises.

*[Regulation 3A inserted in Gazette 24 Jul 2007 p. 3660.]*

**4. Fees**

- (1) The fees set out in Schedule 1 shall be payable in respect of the matters prescribed in that Schedule.
- (2) If a certificate of registration is renewed in accordance with section 49 of the Act after the day on which the certificate expired, a late fee equal to one quarter of the fee specified in item 7 of Schedule 1 for the renewal of the certificate is payable in addition to that specified fee.

*[Regulation 4 amended in Gazette 2 Jul 1982 p. 2334;  
25 Jun 1996 p. 2924.]*

**4A. Holding fee**

- (1) In this regulation —  
**holding fee** means the fee set out in item 11 of Schedule 1 and referred to in section 30(2a)(b) of the Act.
- (2) The holding fee is payable —
  - (a) in the case of a licensee who, on the coming into operation of Part 8 of the *Business Licensing Amendment Act 1995*, holds a licence but does not hold a triennial certificate in respect of the licence, within 60 days after the coming into operation of that Part, and triennially after that payment; or
  - (b) in any other case, within 60 days after a licensee ceases to hold a current triennial certificate in respect of the licence held by the licensee, and triennially after that payment.
- (3) The Board may refund to a licensee —



- (a) two-thirds of the holding fee paid by the licensee if the licensee is granted a triennial certificate less than one year after paying the holding fee; or
- (b) one-third of the holding fee paid by the licensee if the licensee is granted a triennial certificate one year or more, but less than 2 years, after paying the holding fee.

*[Regulation 4A inserted in Gazette 25 Jun 1996 p. 2924;  
amended in Gazette 17 Jun 2008 p. 2558.]*

**4AA. CPD activities**

- (1) For each calendar year the Board is to approve educational activities in accordance with this regulation.
- (2) In approving an educational activity under subregulation (1) —
  - (a) the Board is to specify a point value for the educational activity, and may specify different point values in relation to different regulated persons or classes of regulated persons; and
  - (b) the Board is to specify the CPD subject or CPD subjects in relation to which the educational activity is approved; and
  - (c) the Board may approve the educational activity in relation only to specified regulated persons or a specified class of regulated persons.
- (3) Before the relevant day for each calendar year, in relation to each regulated person —
  - (a) the Board is to approve educational activities for that calendar year under subregulation (1) which have an aggregate point value of at least 10; and
  - (b) the Board may specify one or more CPD activities for that calendar year as mandatory CPD activities for that calendar year.

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- (4) At any time after the relevant day for each calendar year the Board may approve further educational activities for that calendar year under subregulation (1).
- (5) Throughout each calendar year the Board is to maintain on its website an up-to-date notice setting out —
  - (a) sufficient details to identify each CPD activity for that calendar year for each regulated person; and
  - (b) in relation to each CPD activity —
    - (i) the CPD subject to which it relates; and
    - (ii) its point value;
  - and
  - (c) if the Board has specified mandatory CPD activities for that year in accordance with subregulation (3)(b), sufficient details to identify the mandatory CPD activities for each regulated person.

*[Regulation 4AA inserted in Gazette 17 Apr 2009 p. 1321-2.]*

**4AB. Prescribed educational requirement — section 31(3)(b)**

- (1) This regulation applies to a licensee —
  - (a) who is a natural person; and
  - (b) whose triennial certificate is due to expire during the calendar year 2009 or a subsequent calendar year.
- (2) It is an educational requirement for the purposes of section 31(3)(b) that, subject to subregulation (3), during each of the 3 calendar years preceding the calendar year in which a triennial certificate expires the licensee has undertaken CPD activities approved for that calendar year in relation to the licensee —
  - (a) which have an aggregate point value of at least 10; and
  - (b) which —
    - (i) in respect of any calendar year before the calendar year 2009, include at least one CPD

activity approved in respect of each mandatory CPD subject for that calendar year; and

- (ii) in respect of the calendar year 2009 or any subsequent calendar year, include any mandatory CPD activities in relation to that licensee for that calendar year.

- (3) Where a triennial certificate —

- (a) expires during the calendar year 2009; or
  - (b) expires for the first time after it was granted,

the requirement to have undertaken CPD activities set out in subregulation (2) applies only in respect of the 2 calendar years preceding the year in which the certificate expires.

*[Regulation 4AB inserted in Gazette 17 Apr 2009 p. 1322-3.]*

**4AC. Prescribed educational requirement — section 48(5)(b)**

- (1) This regulation applies to a sales representative whose certificate of registration is due to expire during the calendar year 2010 or a subsequent calendar year.
- (2) It is an educational requirement for the purposes of section 48(5)(b) that, subject to subregulation (3), during each of the 3 calendar years preceding the calendar year in which a certificate of registration expires the sales representative has undertaken CPD activities approved for that calendar year in relation to the sales representative —
  - (a) which have an aggregate point value of at least 10; and
  - (b) which, in respect of the calendar year 2009 or any subsequent calendar year, include any mandatory CPD activities in relation to that sales representative for that calendar year.
- (3) Where a certificate of registration expires for the first time after it was granted, the requirement to have undertaken CPD activities set out in subregulation (2) applies only in respect of

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the 2 calendar years preceding the year in which the certificate expires.

*[Regulation 4AC inserted in Gazette 17 Apr 2009 p. 1323.]*

**4B. Prescribed periods**

- (1) For the purposes of section 48(1) and (2) of the Act, the prescribed period is 3 years.
- (2) For the purposes of section 49(2) of the Act, the prescribed period is 3 years.

*[Regulation 4B inserted in Gazette 25 Jun 1996 p. 2924.]*

**5. Notice of application for licence**

- (1) Notice of an application for the grant of a licence to be advertised pursuant to section 24(2) of the Act —
  - (a) shall be in a form approved by the Board; and
  - (b) shall be published by the Board in an issue of the newspaper known as “The West Australian” on a Saturday not less than 14 days before the day fixed for the hearing of the application.

*[(2) deleted]*

*[Regulation 5 amended in Gazette 26 Oct 1990 p. 5370.]*

**6. Prescribed examinations**

- (1) The prescribed examinations for the purposes of clause 1(a) of the Schedule to the Act are —
  - (a) the examinations which are required by a registered training provider to be passed for the conferral of a Diploma of Property (Real Estate), together with the examinations conducted by a registered training provider in the following courses —
    - (i) Unit 15826 — Rural Sales;
    - (ii) Unit 15825 — Selling Businesses; and

- (iii) Unit 15892 — Real Estate Law;  
or
  - (ba) the examinations which are required by a registered training provider to be passed for the conferral of a Diploma of Property Services (Agency Management) CPP50307; or
  - (b) the examinations required to be passed for the conferral of a Bachelor of Commerce (Property and Marketing) or a Bachelor of Commerce (Property) by the Curtin University of Technology.
- (2) In respect of a person who was a licensee and ceased to be licensed due to section 30(2a) of the Act the prescribed examinations for the purposes of clause 1(a) of the Schedule also include the examinations which were prescribed under regulation 6 of these regulations immediately before the commencement of the *Real Estate and Business Agents (General) Amendment Regulations 2003* <sup>1</sup>.

*[Regulation 6 inserted in Gazette 7 Feb 2003 p. 385; amended in Gazette 13 Jan 2004 p. 145; 8 May 2009 p. 1491-2.]*

**6A. Prescribed qualifications for sales representatives**

- (1) The prescribed qualifications for the purposes of section 47(2) of the Act are the successful completion of —
  - (a) the TAFE Sales Representatives Registration Course provided by a registered training provider; or
  - (b) the REIWA Sales Representatives Registration Course provided by the Real Estate Institute of Western Australia Incorporated; or
  - (c) both —
    - (i) Real Estate Business 305; and
    - (ii) Property Management 330,  
provided by the Curtin University of Technology; or

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- (d) each of the following modules from the CPP07 Property Services Training Package —
  - (i) CPPDSM4003A — Appraise property;
  - (ii) CPPDSM4007A — Identify legal and ethical requirements of property management to complete agency work;
  - (iii) CPPDSM4008A — Identify legal and ethical requirements of property sales to complete agency work;
  - (iv) CPPDSM4012A — List property for sale;
  - (v) CPPDSM4014A — Market property for sale;
  - (vi) CPPDSM4022A — Sell and finalise the sale of property by private treaty;
  - (vii) CPPDSM4080A — Work in the real estate industry,provided by a registered training provider; or
- (e) in the case of an application for registration as a sales representative with a condition restricting the registrant to property management transactions only — each of the following modules from the CPP07 Property Services Training Package —
  - (i) CPPDSM4007A — Identify legal and ethical requirements of property management to complete agency work;
  - (ii) CPPDSM4010A — Lease property;
  - (iii) CPPDSM4011A — List property for lease;
  - (iv) CPPDSM4013A — Market property for lease;
  - (v) CPPDSM4016A — Monitor and manage lease/tenancy agreements;
  - (vi) CPPDSM4080A — Work in the real estate industry,provided by a registered training provider.

- (2) In this regulation —

**CPP07 Property Services Training package** means the CPP07 Property Services Training Package published by the National Training Information Service.

*[Regulation 6A inserted in Gazette 7 Feb 2003 p. 386; amended in Gazette 24 Jun 2008 p. 2886-7.]*

**6B. Grant of certificate of registration**

The Board or the Registrar may grant a certificate of registration under section 47 of the Act to an applicant —

- (a) who applies within one year of successfully completing a qualification prescribed in regulation 6A;
- (b) who has held a certificate of registration for at least 3 of the 5 years immediately preceding the making of the application; or
- (c) who complies with regulation 6(1)(a) or (b).

*[Regulation 6B inserted in Gazette 8 May 1987 p. 2103; amended in Gazette 30 Oct 1987 p. 4047; 12 Aug 1988 p. 2770; 7 Feb 2003 p. 386-7; 30 Dec 2004 p. 6924; 17 Nov 2006 p. 4760.]*

**6BA. Requirements for appointment to act as an agent**

- (1) If an amount is not fixed under section 61(1) of the Act, an appointment to act as an agent —
  - (a) where the commission, reward or other valuable consideration to be received by the agent for the services rendered by the agent is expressed as a percentage, is to clearly set out the basis (e.g. selling price, gross rental) on which the percentage is to be calculated;
  - (b) where —
    - (i) the appointment is to act as an agent in a transaction as defined in section 61(4a) of the Act; and

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- (ii) the commission, reward or other valuable consideration to be received by the agent for the services rendered is expressed as an hourly, weekly or other periodic rate,  
is to specify the maximum amount to be received by the agent, expressed as a monetary amount;
  - (c) where the consideration to be received by the agent for the services rendered by the agent is based on the use by a person of certain services provided by the agent, is to provide a full explanation of the nature of the services so provided; and
  - (d) where any expenses (in addition to the commission, reward or other valuable consideration) are to be received by the agent, is to —
    - (i) specify the nature of those expenses; and
    - (ii) clearly set out the method by which the expenses will be calculated.
- (2) If an amount is not fixed under section 61(1) of the Act, an appointment to act as an agent by a person for whom services are to be rendered is to contain, immediately before the statement of the commission, reward or other valuable consideration to be received by the agent, a statement that the commission, reward or consideration is not to be received pursuant to a scale fixed by law but is to be agreed upon between the person and the agent.
- (3) An appointment to act as an agent is to include a statement in clear, concise and plain English to the effect that the person for whom the services are to be rendered by the agent (e.g. the vendor or landlord) may seek assistance from the Real Estate and Business Agents Supervisory Board in relation to disputes as to the commission, reward or other valuable consideration to be received by the agent.

*[Regulation 6BA inserted in Gazette 16 Oct 1998 p. 5734-5.]*



**6C. Definition of “authorised financial institution” — prescribed classes**

For the purposes of the definition of *authorised financial institution* in section 67 of the Act, the following classes of bodies are prescribed —

- (a) the class that consists of all banks; and
- (b) the class that consists of all societies.

*[Regulation 6C inserted in Gazette 25 Jun 1996 p. 2918.]*

**6D. Designation of trust accounts**

- (1) For the purposes of section 68(1) of the Act, a trust account is to be designated in the manner provided for in this regulation.
- (2) The designation of a trust account, other than a separate account, is to include —
  - (a) the description “REBA Trust Account” or “REBA Tenancy Bond Trust Account” as appropriate;
  - (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register; and
  - (c) the letters “TC” followed by the triennial certificate number recorded in the register.
- (3) The designation of a separate account is to include —
  - (a) the description “REBA Trust Account — IB”;
  - (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register;
  - (c) the words “in trust for” followed by the name of the person who requested the separate account; and
  - (d) the letters “TC” followed by the triennial certificate number recorded in the register.

*[Regulation 6D inserted in Gazette 25 Jun 1996 p. 2918-19.]*

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**6E. Prescribed requirements for separate accounts**

- (1) For the purposes of section 68A(4) of the Act, where the transaction in respect of which moneys are paid relates to the sale of real estate or a business, an agent shall only comply with the request for a separate account if the agent is satisfied that —
  - (a) the amount of moneys paid to the agent exceeds \$20 000; or
  - (b) the transaction is not to be settled within 60 days.
- (2) In subregulation (1) —  
**business** means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation, or calling.

*[Regulation 6E inserted in Gazette 25 Jun 1996 p. 2919.]*

**6F. Interest payable on trust accounts**

- (1) For the purposes of section 68B(1) of the Act, interest on the balance of a trust account is to be paid —
  - (a) at the rate that is 70% of the relevant bank accepted bills rate calculated on a daily basis; and
  - (b) within 5 working days of the end of each month.
- (2) In subregulation (1)(a) —  
**relevant bank accepted bills rate** means the 30 day bank accepted bills rate as published in Table F.1 of the “Reserve Bank of Australia Bulletin” for the month that is 2 months before the month in respect of which the interest is to be paid.

(For example, the relevant bank accepted bills rate for May is the 30 day bank accepted bills rate for March.)

*[Regulation 6F inserted in Gazette 25 Jun 1996 p. 2919.]*

**6G. Content of receipts**

A receipt given under section 69(1)(a) of the Act shall contain the following information —

- (aa) the heading “Trust Account Receipt”;
- (a) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register;
- (b) a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
- (c) the date on which the money is received;
- (d) the name of the person paying the money;
- (e) the amount of money received;
- (f) a brief description of the purpose of the payment; and
- (g) if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

*[Regulation 6G inserted in Gazette 25 Jun 1996 p. 2919;  
amended in Gazette 17 Nov 2006 p. 4760.]*

**6H. Records under section 69(1)(b)**

- (1) A record shall be —
  - (a) kept in written form;
  - (b) kept for a period of not less than 6 years from the date on which the money was received; and
  - (c) readily accessible.
- (2) Where a receipt has been given for money received, a record shall contain the information contained in the receipt and may take the form of a duplicate copy of the receipt.
- (3) Where money has been received by electronic transfer, a record shall contain the information specified in regulation 6G(b), (c), (d), (e) and (f) and, for that purpose, the reference in regulation 6G(b) to “receipt” is to be read as a reference to “record”.

*[Regulation 6H inserted in Gazette 25 Jun 1996 p. 2919-20.]*

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**7. Particulars to be included in registers**

The prescribed particulars to be recorded, pursuant to section 133(2) of the Act, by the Registrar —

- (a) in the register of licensees are, in respect of each licensee —
  - (i) the name and address of the licensee;
  - (ii) where the licensee is a firm, the name, address, and, where applicable, licence number of each partner constituting the firm;
  - (iii) where the licensee is a body corporate, the name, address, and, where applicable, licence number of each director of the licensee;
  - (iv) the licence number and the date on which the licence held by the licensee was granted;
  - (v) any special condition to which the licence held by the licensee is subject;
  - (vi) where a claim has been made or sustained against the Fidelity Account in respect of the licensee, a reference to that claim;
- (b) in the register of holders of current triennial certificates are, in respect of each holder —
  - (i) the name and address of the holder;
  - (ii) any business name under which the holder carries on business as an agent;
  - (iii) the situation of the registered office of the holder;
  - (iv) where the holder is a firm, the name, address, and, where applicable, licence number of each partner constituting the firm;
  - (v) where the holder is a body corporate, the name, address and, where applicable, licence number of each director of the holder;

- (vi) where the holder is a firm or body corporate, the name and address of the person in *bona fide* control of the business of the holder;
- (vii) the licence number, and the date on which the licence held by the holder of the certificate was granted;
- (viii) the certificate number, and the date on which the certificate currently held by the holder was granted or renewed, as the case may be;
- (ix) the name and address of the auditor appointed by the holder;
- (x) the amount of any payment made under section 113 of the Act by the holder;
- (c) in the register of holders of current certificates of registration are, in respect of each holder —
  - (i) the name and address of the holder;
  - (ii) the certificate number and the date on which the certificate currently held by the holder was granted or renewed, as the case may be;
  - (iii) any special condition to which the certificate held by the holder is subject;
  - (iv) the amount of any payment made under section 113 of the Act by the holder;
  - (v) the name and address of the licensee or developer for and on behalf of whom the holder acts or by whom the holder is employed;
  - (vi) the date upon which a holder commenced in that capacity to act for and on behalf of, or be employed by, the licensee or developer referred to in subparagraph (v);
  - (vii) the name and address of every other licensee or developer for and on behalf of whom the holder has acted, or by whom the holder has been employed in that capacity, and the dates on

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which the holder commenced and ceased to so act or be employed by each of them, respectively.

*[Regulation 7 amended in Gazette 7 Feb 2003 p. 387; 23 Dec 2008 p. 5467; 10 Nov 2009 p. 4495.]*

**7AA. Definition of “lending institution” — prescribed class**

For the purposes of the definition of ***lending institution*** in section 131A of the Act, the class consisting of bodies, other than bodies referred to in paragraphs (a), (b) and (c) of that definition, that provide loans to persons in order to assist those persons to purchase a dwelling is prescribed.

*[Regulation 7AA inserted in Gazette 25 Jun 1996 p. 2920.]*

**7A. Prescribed form of application for assistance from Home Buyers Assistance Fund**

For the purposes of section 131L(1) of the Act, the prescribed form of application is in the form of Form 1 set out in Schedule 2.

*[Regulation 7A inserted in Gazette 2 Jul 1982 p. 2355.]*

**7B. Prescribed amount for purposes of section 131M(3)**

For the purposes of section 131M(3) the prescribed maximum amount is \$2 000.

*[Regulation 7B inserted in Gazette 30 Sep 1994 p. 4969.]*

**8. Notice of changes in particulars**

A licensee shall give to the Registrar notice in writing —

- (a) where the licensee is a body corporate, of any change in the directors of the body corporate;
- (b) where the licensee is a firm and any of the persons by whom or by which it is constituted is a body corporate,

of any change in the directors of any such body corporate;

- (c) where the licensee is a firm or body corporate, of any change in the person in *bona fide* control of the business operated under the licence held by the licensee,

within one month of the change.

Penalty: \$100.

**9. Recovery of fees, fines and costs**

- (1) The amount of —

- (a) any fees prescribed by these regulations;

- [(b) deleted]*

- (c) any costs ordered by the Board to be paid to the Registrar upon the determination of any proceedings,

may be sued for and recovered by the Registrar on behalf of the Crown in any court of competent jurisdiction.

- (2) Where, upon the determination of any proceedings, the Board makes an order for costs in favour of a person other than the Registrar, the amount of those costs may be sued for by that person and recovered from the person against whom the order is made, in any court of competent jurisdiction.

*[Regulation 9 amended in Gazette 30 Dec 2004 p. 6924.]*

**10. Refund to unsuccessful applicant**

An amount paid to the Board under section 113 of the Act in respect of an application referred to in that section shall, where that application does not result in the grant or renewal of a licence, triennial certificate, or certificate of registration, be refunded to the applicant from the Fidelity Account.

*[Regulation 10 amended in Gazette 10 Nov 2009 p. 4495.]*

**11. Application of Board Interest Account**

For the purposes of section 127 of the Act —

- (a) moneys standing to the credit of the Board Interest Account are to be applied monthly before the end of each month; and
- (b) the following proportions are prescribed —
  - (i) 4.5% to the Fidelity Account; and
  - (ii) 57% to the General Purpose Account; and
  - (iii) 38.5% to the Assistance Account.

*[Regulation 11 inserted in Gazette 25 Jun 1996 p. 2920; amended in Gazette 6 Nov 2001 p. 5837; 10 Nov 2009 p. 4495-6.]*

*[11A, 11AA and 11B. Deleted in Gazette 25 Jun 1996 p. 2920.]*

**12. Claims against Fidelity Account**

A claim against the Fidelity Guarantee Account shall be made in writing and be verified by a statutory declaration made by a person who deposes to the facts therein set out of his own knowledge.

*[Regulation 12 amended in Gazette 10 Nov 2009 p. 4495-6.]*

**13. Codes of conduct**

Any code of conduct that the Board may from time to time prescribe pursuant to section 101 of the Act shall be published in the *Government Gazette*.

**14. Infringement notices**

- (1) The offences specified in Schedule 3 are offences for which an infringement notice may be issued under Part 2 of the *Criminal Procedure Act 2004*.



- (2) The modified penalty specified opposite an offence in Schedule 3 is the modified penalty for that offence for the purposes of the *Criminal Procedure Act 2004* section 5(3).
- (3) The Board may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2.
- (4) The Board is to issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.

*[Regulation 14 inserted in Gazette 28 Aug 2009 p. 3348.]*

**15. Forms**

The forms set out in Schedule 2 are prescribed in relation to the matters specified in those forms.

*[Regulation 15 inserted in Gazette 28 Aug 2009 p. 3348.]*

**Schedule 1 — Fees**

[r. 4 and 4A]

*[Heading inserted in Gazette 23 Jun 2009 p. 2454.]*

<b>Item</b>	<b>Type of fee</b>	<b>Fee</b>
1.	Application for licence .....	\$62.50
2.	Grant of licence .....	\$654.00
3.	Grant of licence to firm .....	\$856.00
4.	Grant of licence to body corporate .....	\$856.00
5.	Renewal of triennial certificate .....	\$421.00
6.	Grant of certificate of registration .....	\$168.80
7.	Renewal of certificate of registration .....	\$138.00
8.	Inspection of a register .....	\$10.00
9.	Copy (certified or uncertified) or an extract of an individual registration — first page ..... each subsequence page .....	\$20.00 \$2.00
10.	Copy (certified or uncertified) or an extract of all registrations in a register .	\$290.00
11.	For the purposes of section 30(2a) (the holding fee) .....	\$198.00

*[Schedule 1 inserted in Gazette 23 Jun 2009 p. 2454.]*

## **Schedule 1A — Professional development subjects**

[r. 4AB]

*[Heading inserted in Gazette 28 Dec 2007 p. 6407.]*

1. Agency agreements
2. Auctions
3. Business broking
4. Business management practices
5. Buyer's agents
6. Communication
7. Conflict of interest and disclosure
8. Customer service skills
9. Disciplinary proceedings
10. Law of contracts
11. Managing agency risk
12. Legislation regulating the carrying on of business as an agent in Western Australia
13. Property management
14. Sale and lease of commercial property
15. Sale process
16. Strata management
17. Trust accounting
18. Understanding real estate documents
19. Valid appointment to act

*[Schedule 1A inserted in Gazette 28 Dec 2007 p. 6407.]*

## Schedule 2 — Forms

[r. 15]

*[Heading inserted in Gazette 28 Aug 2009 p. 3349.]*

### **Form 1 — Application for grant for assistance with incidental expenses under the Real Estate and Business Agents Act 1978 section 131L**

*Real Estate and Business Agents Act 1978*

To be completed by applicant and submitted to a lending institution with application for a housing loan.

All details in this application form must be supplied.

#### **1. Particulars of Applicant(s)**

##### **Applicant 1.**

Please tick (✓): ☐ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other .....

Surname .....

Given Names .....

Previous Name .....

Occupation .....

Street Address .....

Suburb/Town ..... Post Code .....

Telephone No. .... (Business) ..... (Home)

..... (Mobile)

Date of Birth ...../...../.....

##### **Applicant 2. (If applicable)**

Please tick (✓): ☐ Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other .....

Surname .....

Given Names .....

Previous Name .....

Occupation .....

Street Address .....

Suburb/Town ..... Post Code .....

Telephone No. .... (Business) ..... (Home)

..... (Mobile)

Date of Birth      ...../...../.....

**2.      Particulars of any other dwelling owned or partially owned**

Do either of the applicants own or partially own, or have either of the applicants ever owned, or partially owned, any dwelling in Western Australia?

Please tick (✓): ☐ Yes ☐ No

If so, please give particulars of the dwelling(s) and ownership: .....

.....

.....

**3.      Particulars of Dwelling to be purchased**

Please tick (✓):

Is dwelling complete? ☐ Yes ☐ No      Partially erected? ☐ Yes ☐ No

Street Address      .....

Suburb/Town      ..... Post Code .....

Purchase price      .....

Amount of loan      .....

Name of lending institution(s) .....

Name of real estate agent .....

**4. Particulars of Incidental Expenses**

Expense	Amount \$	Carried forward	\$
Stamp duty — transfer — mortgage		Lending institution fees for lodging this application	
Registration fees — transfer — mortgage — caveat		Mortgage guarantee fees or mortgage insurance premium (not house and contents insurance or mortgage protection insurance)	
Conveyancing fees		Inspection fees	
Solicitor's fees		Establishment fees	
Valuation fees			
<b>Sub Total</b>	<b>\$</b>	<b>Total</b>	<b>\$</b>

**Declaration**

I do solemnly declare that:

- (a) the information provided by me in this application is true and correct;
- (b) I do not intend to lease the dwelling, or permit it to be leased, for the period of 12 months after settlement on its purchase; and
- (c) the dwelling, unless it is a partly built dwelling, is to be used as the principal place of residence of myself and my immediate family for at least the period referred to in paragraph (b) of this declaration.

And I make this solemn declaration by virtue of section 106 of the *Evidence Act 1906*.

Declared at .....

Dated this ..... day of ..... 2 .....

Declarant 1. ....

Declarant 2. ....  
 (If applicable)

Before me .....  
 [Justice of the Peace, Commissioner for Declarations, or  
 Authorised Person]

*[Form 1 inserted in Gazette 8 Feb 2002 p. 599-602; amended in  
 Gazette 28 Aug 2009 p. 3349.]*

**Form 2 — Infringement notice**

<i>Real Estate and Business Agents Act 1978</i>		Infringement notice no.
<b>Infringement notice</b>		
<b>Alleged offender</b>	Name: Family name	
	Given names	
	or    Company name _____ ACN	
	Address _____ Postcode	
<b>Alleged offence</b>	Description of offence _____	
	<i>Real Estate and Business Agents Act 1978 s.</i>	
	<i>Real Estate and Business Agents (General) Regulations 1979 r.</i>	
	Date        /        /20	Time        a.m./p.m.
	Modified penalty \$	
<b>Officer issuing notice</b>	Name	
	Signature	
	Office	
<b>Date</b>	Date of notice    /        /20	
<b>Notice to alleged</b>	It is alleged that you have committed the above offence.	



<b>offender</b>	<p>If you do not want to be prosecuted in court for the offence, pay the modified penalty within 28 days after the date of this notice.</p> <p><b>How to pay</b></p> <p><b>By post:</b> Send a cheque or money order (payable to ‘Approved Officer — <i>Real Estate and Business Agents Act 1978</i>’) to the following address:</p> <p>Approved Officer Real Estate and Business Agents Supervisory Board [Address]</p> <p><b>In person:</b> Pay the cashier at:</p> <p>Real Estate and Business Agents Supervisory Board [Address]</p> <p><b>If you do not pay</b> the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act your driver’s licence and/or vehicle licence may be suspended.</p>
	<p><b>If you need more time</b> to pay the modified penalty, you can apply for an extension of time by writing to the Approved Officer at the above postal address.</p>
	<p><b>If you want this matter to be dealt with by prosecution in court</b>, sign here _____ and post this notice to the Approved Officer at the above postal address within 28 days after the date of this notice.</p>

[Form 2 inserted in Gazette 28 Aug 2009 p. 3349-50.]

**Form 3 — Withdrawal of infringement notice**

<i>Real Estate and Business Agents Act 1978</i>		Withdrawal no.
<b>Withdrawal of infringement notice</b>		
<b>Alleged offender</b>	Name: Family name	
	Given names	

	or      Company name _____ <div style="text-align: right;">ACN</div>
	Address _____ <div style="text-align: right;">Postcode</div>
<b>Infringement notice</b>	Infringement notice no. _____ Date of issue    /        /20
<b>Alleged offence</b>	Description of offence _____
	<i>Real Estate and Business Agents Act 1978 s.</i> <i>Real Estate and Business Agents (General) Regulations 1979 r.</i> Date        /        /20      Time        a.m./p.m.
<b>Officer withdrawing notice</b>	Name _____ Signature _____ Office _____
<b>Date</b>	Date of withdrawal    /        /20
<b>Withdrawal of infringement notice</b>  [*delete whichever is not applicable]	The above infringement notice issued against you has been withdrawn. If you have already paid the modified penalty for the alleged offence you are entitled to a refund. * Your refund is enclosed. <i>or</i> * If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to: <div style="text-align: right;">           Approved Officer — <i>Real Estate and Business Agents Act 1978</i>            Real Estate and Business Agents Supervisory Board            [Address]         </div>

	Signature / /20
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*[Form 3 inserted in Gazette 28 Aug 2009 p. 3350-1.]*

### **Schedule 3 — Prescribed offences and modified penalties**

[r. 14]

*[Heading inserted in Gazette 28 Aug 2009 p. 3351.]*

<b>Offences under <i>Real Estate and Business Agents Act 1978</i></b>		<b>Modified Penalty</b>
s. 35	Failing to notify Registrar of ceasing or commencing business	\$400
s. 36(1)	Failing to have registered office in the State	\$200
s. 37(1)	Failing to register a branch office	\$200
s. 37(2)	Failing to have qualified manager at branch office	\$200
s. 37(3)	Branch manager acting for more than one licensee or as an agent on own account	\$400
s. 40(1)(a)	Carrying on business under a name not endorsed on triennial certificate	\$200
s. 40(1)(b)	Failing to include surname and initials of licensee on all business correspondence	\$200
s. 40(3)	Failing to notify Registrar of alteration of business name	\$200
s. 41(1)(a)	Failing to display official details at registered office	\$400
s. 41(1)(b)	Failing to display official details at branch office	\$400
s. 41(2)(a)	Failing to display official details on all	

<b>Offences under <i>Real Estate and Business Agents Act 1978</i></b>		<b>Modified Penalty</b>
	correspondence and documents from registered office	\$400
s. 41(2)(b)	Failing to display official details on all correspondence and documents from branch office	\$400
s. 51(1)	Failing to notify Registrar of commencing or ceasing employment, or to act, as a sales representative	\$400
s. 70(1)	Failing to cause audit of trust account	\$600
s. 70(3)	Failing to deliver audit report to the Board	\$600
<b>Offence under <i>Real Estate and Business Agents (General) Regulations 1979</i></b>		<b>Modified Penalty</b>
r. 8	Failing to notify Registrar of change in particulars	\$20

*[Schedule 3 inserted in Gazette 28 Aug 2009 p. 3351-2.]*

### Notes

- <sup>1</sup> This is a compilation of the *Real Estate and Business Agents (General) Regulations 1979* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Real Estate and Business Agents (General) Regulations 1979</i>	31 Aug 1979 p. 2616-18	1 Sep 1979
<i>Real Estate and Business Agents (General) Amendment Regulations 1980</i>	26 Sep 1980 p. 3312	26 Sep 1980
<i>Real Estate and Business Agents (General) Amendment Regulations 1981</i>	26 Jun 1981 p. 2293	26 Jun 1981
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1981</i>	6 Nov 1981 p. 4526	1 Dec 1981 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations 1982</i>	2 Jul 1982 p. 2334-6	2 Jul 1982 <sup>2</sup>
<b>Reprint of the <i>Real Estate and Business Agents (General) Regulations 1979</i> in Gazette</b> 26 Nov 1982 p. 4667-74 (includes amendments listed above)		
<i>Real Estate and Business Agents (General) Amendment Regulations 1983</i>	21 Oct 1983 p. 4298	1 Jan 1984 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1983</i>	30 Dec 1983 p. 5121-2	30 Dec 1983
<i>Real Estate and Business Agents (General) Amendment Regulations 1984</i> <sup>3</sup>	21 Dec 1984 p. 4191	21 Dec 1984
<i>Real Estate and Business Agents (General) Amendment Regulations 1985</i>	21 Jun 1985 p. 2262	21 Jun 1985
<i>Real Estate and Business Agents (General) Amendment Regulations 1986</i>	28 Feb 1986 p. 668	28 Feb 1986

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Real Estate and Business Agents (General) Amendment Regulations 1986</i>	13 Jun 1986 p. 1997-8	1 Jul 1986 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1986</i>	8 Aug 1986 p. 2870-1	1 Feb 1987 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 4) 1986</i>	24 Dec 1986 p. 4998	24 Dec 1986
<i>Real Estate and Business Agents (General) Amendment Regulations 1987</i>	8 May 1987 p. 2103	8 May 1987
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1987</i>	4 Sep 1987 p. 3519	4 Sep 1987
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1987</i>	30 Oct 1987 p. 4047	30 Oct 1987
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 4) 1987</i>	18 Dec 1987 p. 4516	18 Dec 1987
<i>Real Estate and Business Agents (General) Amendment Regulations 1988</i>	12 Aug 1988 p. 2770	12 Aug 1988
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1988</i>	2 Sep 1988 p. 3466	2 Sep 1988
<i>Real Estate and Business Agents (General) Amendment Regulations 1989</i>	20 Jan 1989 p. 132	20 Jan 1989
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1989</i>	3 Feb 1989 p. 360	3 Feb 1989
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1989</i>	30 Jun 1989 p. 1979	1 Jul 1989 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations 1990</i>	15 Jun 1990 p. 2723 (erratum 22 Jun 1990 p. 3034)	15 Jun 1990

## **Real Estate and Business Agents (General) Regulations 1979**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1990</i>	20 Jul 1990 p. 3461	20 Jul 1990
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1990</i>	1 Aug 1990 p. 3652-3	1 Aug 1990
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 4) 1990</i>	26 Oct 1990 p. 5370	26 Oct 1990
<i>Real Estate and Business Agents (General) Amendment Regulations 1991</i>	28 Jun 1991 p. 3119	28 Jun 1991
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1991</i>	13 Dec 1991 p. 6160	13 Dec 1991
<i>Real Estate and Business Agents (General) Amendment Regulations 1992</i>	14 Aug 1992 p. 4011-12	14 Aug 1992
<b>Reprint of the Real Estate and Business Agents (General) Regulations 1979 as at 1 Oct 1992</b> (includes amendments listed above)		
<i>Real Estate and Business Agents (General) Amendment Regulations 1993</i>	30 Nov 1993 p. 6411-12	30 Nov 1993
<i>Real Estate and Business Agents (General) Amendment Regulations 1994</i>	30 Sep 1994 p. 4969-72	6 Oct 1994 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1994</i>	9 Dec 1994 p. 6661-2	9 Dec 1994
<i>Real Estate and Business Agents (General) Amendment Regulations 1996</i>	7 Jun 1996 p. 2392	7 Jun 1996
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1996</i>	25 Jun 1996 p. 2917-22	1 Jul 1996 (see r. 2 and <i>Gazette</i> 25 Jun 1996 p. 2902)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1996</i>	25 Jun 1996 p. 2923-5	1 Jul 1996 (see r. 2 and <i>Gazette</i> 1 Jul 1996 p. 3179)



## Real Estate and Business Agents (General) Regulations 1979

Citation	Gazettal	Commencement
<i>Real Estate and Business Agents (General) Amendment Regulations 1997</i>	27 Jun 1997 p. 3099-101	1 Jul 1997 (see r. 2)
<b>Reprint of the Real Estate and Business Agents (General) Regulations 1979 as at 28 Nov 1997</b> (includes amendments listed above)		
<i>Real Estate and Business Agents (General) Amendment Regulations 1998</i>	16 Oct 1998 p. 5733-5	1 Nov 1998 (see r. 2 and <i>Gazette</i> 16 Oct 1998 p. 5729)
<i>Real Estate and Business Agents (General) Amendment Regulations 1999</i>	8 Oct 1999 p. 4782-3	8 Oct 1999
<i>Real Estate and Business Agents (General) Amendment Regulations 2000</i>	18 Feb 2000 p. 913-14	18 Feb 2000
<i>Real Estate and Business Agents (General) Amendment Regulations 2001</i>	6 Nov 2001 p. 5837	6 Nov 2001
<i>Real Estate and Business Agents (General) Amendment Regulations 2002</i>	8 Feb 2002 p. 599-602	8 Feb 2002
<b>Reprint of the Real Estate and Business Agents (General) Regulations 1979 as at 8 Mar 2002</b> (includes amendments listed above)		
<i>Real Estate and Business Agents (General) Amendment Regulations 2003</i> <sup>4, 5</sup>	7 Feb 2003 p. 384-7 (as amended 13 Jan 2004 p. 145-6)	7 Feb 2003
<i>Real Estate and Business Agents (General) Amendment Regulations 2004</i>	13 Jan 2004 p. 145-6	13 Jan 2004
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2004</i>	30 Dec 2004 p. 6924	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Real Estate and Business Agents (General) Amendment Regulations 2006</i>	27 Jun 2006 p. 2269-70	1 Jul 2006 (see r. 2)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2006</i>	17 Nov 2006 p. 4759-60	17 Nov 2006

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Real Estate and Business Agents (General) Amendment Regulations 2007</i>	6 Feb 2007 p. 307-10	6 Feb 2007
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2007</i>	9 Mar 2007 p. 847-8	9 Mar 2007
<b>Reprint 5: The Real Estate and Business Agents (General) Regulations 1979 as at 8 June 2007</b> (includes amendments listed above)		
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 4) 2007</i>	24 Jul 2007 p. 3659-60	r. 1 and 2: 24 Jul 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Jul 2007 (see r. 2(b) and <i>Gazette</i> 25 Jul 2007 p. 3657)
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 5) 2007</i>	28 Dec 2007 p. 6403-7	r. 1 and 2: 28 Dec 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 29 Dec 2007 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2008</i>	17 Jun 2008 p. 2557-8	r. 1 and 2: 17 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations 2008</i>	24 Jun 2008 p. 2886-7	r. 1 and 2: 24 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Jun 2008 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 2008</i>	23 Dec 2008 p. 5465-7	r. 1 and 2: 23 Dec 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Dec 2008 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations 2009</i>	17 Apr 2009 p. 1319-23	r. 1 and 2: 17 Apr 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 18 Apr 2009 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2009</i>	8 May 2009 p. 1491-2	r. 1 and 2: 8 May 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2009 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 4) 2009</i>	23 Jun 2009 p. 2453-4	r. 1 and 2: 23 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2009 (see r. 2(b))

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 2009</i>	28 Aug 2009 p. 3347-52	r. 1 and 2: 28 Aug 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 29 Aug 2009 (see r. 2(b))
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 5) 2009</i>	10 Nov 2009 p. 4495-6	r. 1 and 2: 10 Nov 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 11 Nov 2009 (see r. 2(b))

<sup>2</sup> The commencement date in r. 2 was of no effect as it was before the date of gazettal.

<sup>3</sup> The *Miscellaneous Regulations (Validation) Act 1985* applied to these regulations. It deems the regulations not to have ceased to have effect as a result of the failure to comply with section 42(1) of the *Interpretation Act 1984*, subject to their being laid before the Legislative Assembly. The *Interpretation Act 1984* s. 42(2) then applied as if the words “or if any regulations are not laid before both Houses of Parliament in accordance with subsection (1)” had been omitted.

<sup>4</sup> The *Real Estate and Business Agents (General) Amendment Regulations 2003* r. 4(2) (as amended in *Gazette* 13 Jan 2004 p. 146) reads as follows:

“

- (2) Despite the amendments effected by subregulation (1), examinations referred to in a provision of the *Real Estate and Business Agents (General) Regulations 1979* referred to in column 1 of the Table to this subregulation, as in force immediately before the commencement of these regulations, continue to be prescribed examinations for the purposes of clause 1(a) of the Schedule to the Act until the date specified in column 2 of that Table opposite the reference to the provision.

**Table**

r. 6(a)(i)	1 Jul 2003
r. 6(a)(ii), (b) or (c)	1 Jan 2004
r. 6(a)(iii)	1 Jan 2006

*[Regulation 4(2) amended in Gazette 13 Jan 2004 p. 146.]*

”.

<sup>5</sup> The *Real Estate and Business Agents (General) Amendment Regulations 2003* r. 5(2) reads as follows:

“

- (2) Despite the amendment effected by subregulation (1), the qualification referred to in regulation 6A(c) of the *Real Estate and Business Agents (General) Regulations 1979*, as

in force immediately before the commencement of these regulations, continues to be a prescribed qualification for the purposes of section 47(2) of the Act in respect of an application for registration as a real estate and business sales representative made under the Act on or before 1 January 2004.

”.