

WESTERN AUSTRALIA

REAL ESTATE AND BUSINESS AGENTS ACT 1978

**REAL ESTATE AND
BUSINESS AGENTS
(GENERAL)
REGULATIONS
1979**

REPRINTED AS AT 28 NOVEMBER 1997

WESTERN AUSTRALIA

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AGENTS (GENERAL)
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Citation

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

Interpretation

2. In these regulations, unless the contrary intention appears —

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

“**Ministry**” means the department of the Public Service principally assisting the Minister in the administration of the Act;

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

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

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

[Regulation 2 inserted in Gazette 25 June 1996 p.2918.]

Common seal

3. (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.

Fees

4. (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 July 1982 p.2334;
25 June 1996 p.2924.]*

Holding fee

4A. (1) In this regulation —

“holding fee” means the fee set out in item 13 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 June 1996 p.2924.*]

Prescribed periods

4B. (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 June 1996 p.2924.*]

Notice of application for licence

5. (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

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- (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 October 1990 p.5370.*]

Prescribed examinations

6. The prescribed examinations for the purposes of clause 1 (a) of the Schedule to the Act are —

- (a) the examinations which are required to be passed, by the Technical and Further Education Division of the Education Department, for —
 - (i) the conferring of a Certificate in Real Estate Management; or
 - (ii) the completing of Stage 1 of an Associate Diploma of Business (Real Estate);
- (b) the examinations required to be passed for the conferring of a Diploma in Valuations by the Curtin University of Technology², together with the examinations conducted by that body in the following courses —
 - Accounting 203.
 - Property Marketing and Management; or
- (c) the examinations required to be passed for the conferring of an Associate Diploma in Valuation, a Bachelor of Business (Valuation and Land Administration) or a Bachelor of Commerce (Property) by the Curtin University of Technology, together with the examinations conducted by that body in the following courses —
 - (i) Property Marketing and Management and either Accounting Systems 153 or Accounting 203;

- (ii) Real Estate Business 250 and Real Estate Business 300; or
- (iii) Real Estate Business 305 and Property Management 330.

[Regulation 6 amended in Gazette 28 February 1986 p.668; 8 August 1986 p.2870; 8 May 1987 p.2103; 20 July 1990 p.3461; 9 December 1994 p.6662.]

Prescribed qualifications for sales representatives

6A. The prescribed qualifications for the purpose of section 47 (2) are —

- (a) the Certificate for Real Estate Sales Representatives conferred by the Technical and Further Education Division of the Education Department;
- (b) the Certificate for Real Estate Sales Representative conferred by the Real Estate Institute of Western Australia Incorporated; or
- (c) Certificate III in Property Services conferred either by the Technical and Further Education Division of the Education Department or the Real Estate Institute of Western Australia Incorporated.

[Regulation 6A inserted in Gazette 26 September 1980 p.3312; amended in Gazette 8 August 1986 p.2871; 7 June 1996 p.2392.]

Grant of certificate of registration

6B. The Board may grant a certificate of registration under section 47 of the Act to an applicant —

- (a) who applies within one year of completing either of the qualifications specified in regulation 6A;

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- (b) who has held a certificate of registration for at least 3 of the 5 years immediately preceding his application; or
- (c) who complies with regulation 6 (a), (b) or (c).

[Regulation 6B inserted in Gazette 8 May 1987 p.2103; amended in Gazette 30 October 1987 p.4047; 12 August 1988 p.2770.]

Definition of “authorized financial institution” — prescribed classes

6C. For the purposes of the definition of “authorized 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 June 1996 p.2918.]

Designation of trust accounts

6D. (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 June 1996 p.2918-19.]

Prescribed requirements for separate accounts

6E. (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 June 1996 p.2919.]

Interest payable on trust accounts

6F. (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 June 1996 p.2919.]

Content of receipts

6G. A receipt given under section 69 (1) (a) of the Act shall contain the following information —

- (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 June 1996 p.2919.]

Records under section 69 (1) (b)

- 6H.** (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 June 1996 p.2919-20.]

Particulars to be included in registers

7. 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;

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- (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 Fund 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 which he commenced and ceased to so act or be employed by each of them, respectively.

Definition of “lending institution” — prescribed class

7AA. 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 June 1996 p.2920.]

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Prescribed form of application for assistance from Home Buyers Assistance Fund

7A. 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 July 1982 p.2355.]

Prescribed amount for purposes of section 131M (3)

7B. For the purposes of section 131M (3) the prescribed maximum amount is \$2 000.

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

Notice of changes in particulars

- 8.** 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.

Recovery of fees, fines and costs

- 9.** (1) The amount of —
- (a) any fees prescribed by these regulations;

- (b) any fine ordered by the Board to be paid pursuant to the Act;
- (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.

Refund to unsuccessful applicant

10. 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 Guarantee Fund.

Application of Board Interest Account

11. For the purposes of section 127 of the Act —

- (a) moneys standing to the credit of the Account are to be applied monthly before the end of each month; and
- (b) the following proportions are prescribed —
 - (i) 1% to the Fidelity Fund;
 - (ii) 64% to the General Purpose Fund; and
 - (iii) 35% to the Assistance Fund.

[Regulation 11 inserted in Gazette 25 June 1996 p.2920.]

[11A, 11AA and 11B. Repealed in Gazette 25 June 1996 p.2920.]

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Claims against the Fidelity Fund

12. A claim against the Fidelity Guarantee Fund 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.

Codes of conduct

13. 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*.

SCHEDULE 1

[Regs. 4 and 4A]

	Fees	\$
1.	Application for licence	55
2.	Grant of licence to natural person	333
3.	Grant of licence to firm	500
4.	Grant of licence to body corporate	500
5.	Renewal of triennial certificate	333
6.	Grant of certificate of registration	132
7.	Renewal of certificate of registration	132
8.	Grant of Business Agent's Permit	156
9.	Renewal of Business Agent's Permit	124
10.	Inspection of a register	10
11.	Copy (certified or uncertified) or an extract of an individual registration —	
	first page	10
	each subsequent page	2
12.	Copy (certified or uncertified) or an extract of all registrations in a register	278
13.	For the purposes of section 30 (2a) (the holding fee)	150

*[Schedule 1 inserted in Gazette 30 November 1993
pp.6411-12; amended in Gazette 25 June 1996 p.2925.]*

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SCHEDULE 2

[Regulation 7A]

Forms

Form 1

Western Australia

Real Estate and Business Agents Act 1978

[Section 131L (1)]

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[Regulation 7A]

**APPLICATION FOR GRANT OF WHOLE OR ANY PART OF
INCIDENTAL EXPENSES IN CONNECTION WITH
PURCHASE OF A PROPERTY WITH A DWELLING OR
PARTIALLY ERECTED DWELLING THEREON**

To be completed by applicant and submitted to 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)

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)

Date of Birth / /

Name of Spouse/Partner (If applicable)

2. Particulars of any other Real Estate Property owned or previously owned (includes joint ownership with a former partner)

Have you or your joint applicant, or your spouse or partner, ever owned any real estate property in Western Australia, in other States or Territories of Australia or in any other overseas country?

Please tick (✓): Yes No

If so, please give particulars of property and ownership:

.....

3. Particulars of Property 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 1st Mortgage

..... 2nd Mortgage (if any)

Name of lending institution/institutions

Name of real estate agent

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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			
Sub Total	\$	Total	\$

Declaration

I do solemnly declare that:

- (a) the information listed above is true and correct;
- (b) I will not 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 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*.

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Sch. 2

Declared at

Dated this day of 19

Declarant 1.

Declarant 2.
(If applicable)

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

*[Schedule 2 inserted in Gazette 2 July 1982 pp.2335-6;
amended in Gazette 30 December 1983 pp.5121-2;
30 September 1994 pp.4969-72; 25 June 1996 pp.2920-2;
27 June 1997 pp.3099-101.]*

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NOTES

¹ This reprint is a compilation as at 28 November 1997 of the *Real Estate and Business Agents (General) Regulations 1979* and includes the amendments referred to in the following Table.

[This compilation has been reprinted and amendments prior to the latest reprint are not referred to in this Table.]

Table of Regulations

Regulation	Gazettal	Commencement	Miscellaneous
<i>Real Estate and Business Agents (General) Regulations 1979</i>	31 August 1979 pp.2616-18	31 August 1979	
(Regulations effecting amendments in the previous reprint are not referred to in this Table)			Previous reprint as at 1 October 1992
<i>Real Estate and Business Agents (General) Amendment Regulations 1993</i>	30 November 1993 pp.6411-12	30 November 1993	
<i>Real Estate and Business Agents (General) Amendment Regulations 1994</i>	30 September 1994 pp.4969-72	6 October 1994 (see regulation 2)	
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1994</i>	9 December 1994 pp.6661-2	9 December 1994	
<i>Real Estate and Business Agents (General) Amendment Regulations 1996</i>	7 June 1996 p.2392	7 June 1996	
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 3) 1996</i>	25 June 1996 pp.2917-22	1 July 1996 (see regulation 2 and <i>Gazette</i> 25 June 1996 p.2902)	
<i>Real Estate and Business Agents (General) Amendment Regulations (No. 2) 1996</i>	25 June 1996 pp.2923-5	1 July 1996 (see regulation 2 and <i>Gazette</i> 1 July 1996 p.3179)	

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Regulation	Gazettal	Commencement	Miscellaneous
<i>Real Estate and Business Agents (General) Amendment Regulations 1997</i>	27 June 1997 pp.3099-101	1 July 1997 (see regulation 2)	

² Title changed under *Reprints Act 1984* s.7 (3) (h).