

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

AGENTS REGULATIONS 2003

SUBORDINATE LAW No SL2003-38

EXPLANATORY STATEMENT

**Circulated by authority of the
Attorney General
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Statutory Rules

Overview

The *Agents Act 2003* was passed by the Legislative Assembly on 6 May 2003. The *Agents Act* regulates the conduct of real estate, stock and station, business, travel and employment agents through the imposition of a licensing and registration system and a complaints and disciplinary system. Consumers of agency services can lodge their grievances against agents with the Commissioner for Fair Trading who will investigate, and where appropriate, refer matters to the Consumer and Trader Tribunal for determination. The *Agents Act 2003* replaces the former *Agents Act 1968*.

The object of this Regulation is to make regulations under the *Agents Act 2003* with respect to the following matters:

- prescribing stated units of competency from the Property Development and Management Training Package PRD01 approved by the Australian National Training Authority (ANTA) as the qualification for a real estate, stock and station and business agent's licence;
- providing that the underpinning knowledge for a unit of competency in the Property Development and Management Training Package PRD01 must be based on ACT law;
- prescribing stated requirements for the renewal of a licence;
- prescribing stated units of competency from the Property Development and Management Training Package PRD01 approved by ANTA as a qualification for a salesperson and property manager employed by a licensed real estate and stock and station agent, and a salesperson employed by a business agent, and provision for assessment by a registered training organisation confirming that a person already possesses the required competencies as set out in Schedule 2;
- prescribing certain information that must be included in an advertisement in a daily newspaper of a person's intention to apply for registration;
- providing stated requirements for the renewal of a registration;
- setting a period of five business days beginning on the day after a licensed agent changes their main place of business address to notify the Commissioner for Fair Trading;
- prescribing matters to be taken into account by the Commissioner for Fair Trading in considering whether to grant an exemption from the provisions of the Act that prevent a licensee from being in charge at more than one place of business, or of the business of more than one licensee;
- prescribing specific information or warnings that a licensed agent or a salesperson must give to a consumer if they are giving financial and investment advice about the sale or purchase of land;
- imposing requirements as to the content of agency agreements;
- prescribing purposes for which trust money not paid into the compensation fund must be used;

- rules of conduct to be observed by licence and certificate of registration holders in the exercise of their functions;
- imposing a requirement on an auctioneer who advertises an auction;
- transitional arrangements allowing existing salespeople and property managers to continue to be employed after the commencement of the Act and Regulation on condition that they successfully complete their educational qualification within 2 years, and allowing new salespeople and property managers employed after the commencement of the Act and Regulation to be employed on condition they have enrolled in and obtained either a statement of attainment or the requisite qualification within one year.

This Regulation is made under the *Agents Act 2003* including sections 25,36,49,50,52,60,68,71,83,100,163,171 and 178 (the general regulation-making power).

PART 1 Preliminary

Regulation 1 Name of regulations

This regulation names the Regulation as the *Agents Regulations 2003*.

Regulation 2 Commencement

The regulations will commence on 1 November 2003.

Regulation 3 Dictionary

This regulation explains that the dictionary at the end of the Regulations is part of the substantive provisions of the regulations.

Regulation 4 Notes

This regulation makes it clear that the notes in the Regulations are explanatory only and do not form part of the substantive provisions of the Regulations

Regulation 5 Offences against regulations – application of Criminal Code etc

This regulation makes it clear that other legislation applies to offences against these regulations.

PART 2 Licensing

Regulation 6 Qualifications for licences, Act s 25

This regulation sets out the educational qualifications an applicant must satisfy to become eligible for a real estate, stock and station and business agent's licence. Regulation 6(2) sets out the educational qualifications an applicant must satisfy to become eligible for a real estate and stock and station auctioneer's licence. The regulation also sets out the educational qualifications a travel agent must satisfy to become eligible for a travel agent's licence.

Regulation 7 Underpinning knowledge for property development and management training package

This regulation makes it clear that the educational qualification for a real estate, stock and station and business agent's licence must be based on ACT law.

Regulation 8 Renewal of licences, Act s 36

This regulation makes it clear that on renewal of a licence, the licensee must have complied with any conditions imposed on the licence under the Act and met any other condition put on the licence under section 34 of the Act.

PART 3 Registration

Regulation 9 Qualifications for registration as a salesperson, Act s 50

This regulation sets out the educational qualifications a salesperson including a property manager (where appropriate) must satisfy to become eligible for a real estate, stock and station and business agent's certificate of registration. An applicant for registration will be required to either complete a course of study made up of specified competency units set out in Schedule 2, or be assessed by a Registered Training Organisation as already possessing the competencies prescribed in Schedule 2.

Regulation 10 Information to be included in advertisement of intention to apply for registration, Act ss 52(2)

This regulation requires an applicant for registration to include their full name and postal address in the advertisement notifying the public of their intention to seek registration. The purpose of this regulation is to give the public an opportunity to lodge an objection with the Commissioner for Fair Trading stating the grounds upon which it is claimed that the applicant is not eligible for registration. Upon receipt of an objection, the Commissioner for Fair Trading will determine the objection.

Regulation 11 Renewal of registrations, Act paragraph 60(3)(b)

This regulation makes it clear that on renewal of a registration, the salesperson or property manager must have complied with any conditions imposed on the registration under the Act and met any other condition put on the registration under section 58 of the Act.

PART 4 Conduct of licensed agents, registered salespeople

Division 4.1 Licensed agent's main place of business

Regulation 12 Notice of change of main place of business, Act ss 68(2)

This regulation requires a licensed agent to tell the Commissioner for Fair Trading within five business days of a change in the agent's main place of business. The purpose of this regulation is to facilitate enforcement and compliance with the legislation.

Division 4.2 Management of licensed agent’s business

Regulation 13 Licensed agent to be in charge of business – exemptions, Act ss 71(3)

Subregulation 13(1) sets out the factors that the Commissioner for Fair Trading must consider in determining whether to permit a place of business not to have a licensed agent in charge.

Subregulation 13(2) sets out the factors that the Commissioner for Fair Trading must consider in determining whether to permit one licensee to be in charge of more than one place of business.

Division 4.3 Land – further provisions

Regulation 14 Agents giving financial and investment advice, Act s 83

This regulation sets out information or warnings that a licensed agent or registered salesperson must give to a person if the licensed agent or salesperson provides financial or investment advice that is intended to influence the person to whom it is given in making a particular financial or investment decision about the sale or purchase of land.

PART 5 Agency agreements

Regulation 15 Content of agency agreements, Act paragraph 100(1)(c)

This regulation prescribes the terms and conditions of an agency agreement that must be included in agency agreements as set out in schedules 3 – 7.

Schedule 3 sets out various terms that must be included in all agency agreements. Schedule 4 contains terms that must be included in agency agreements for the sale of residential property. Schedule 5 contains terms which must be included in a buyer’s agent agency agreement. Schedule 6 contains terms that must be included in agency agreements for the sale of rural land. Schedule 7 contains terms that must be included in agency agreements for the sale of businesses.

PART 6 Miscellaneous

Regulation 16 Use of excess trust money, Act s 163

This regulation requires that any trust money not paid into the compensation fund under section 162 of the Act must be used for the purposes set out in section 163(2) (a) to (g) of the Act.

Regulation 17 Rules of conduct for agents, Act ss 171(1)

This regulation sets out the rules of conduct that must be observed by licensed agents and registered salespeople including property managers. A breach of a rule of conduct by a licensed agent or a registered salesperson or property manager is a ground for disciplinary action by the Consumer and Trader Tribunal.

Regulation 18 Rules of conduct for auctioneers, Act s 171

This regulation requires an auctioneer to include his or her name and licence number in an advertisement for an auction.

PART 7 Transitional provisions

Regulation 19 Eligibility for registration, Act s 49 – unregistered employees before commencement day

This regulation allows existing salespeople and property managers to continue to work in the industry after the Act and the regulations commence, on condition that they obtain a qualification or statement of attainment from a registered training organisation in each of the competency units set out in Schedule 2 within two years after the day these regulations commence.

Regulation 20 Eligibility for registration, Act s 49 – new employees on and after commencement day

This regulation allows new salespeople and property managers to work in the industry after the Act and the regulations commence on condition that they have enrolled in the units of competency set out in Schedule 2 as an employee of a licensed agent when they apply for registration, and have obtained competency in the units of competency set out in Schedule 2 with a registered training organisation within one year from the day the regulations commence.

Regulation 21 Expiry of Part 7

This regulation notes that Part 7 expires two years after the day it commences.

SCHEDULES 1 – 8

Schedule 1 – *Qualifications for real estate, stock and station, and business agents' licences, units of competency in PRD01* - prescribes competency units as set out in the Property Development and Management Training Package – PRD01, approved by ANTA, which applicants for a real estate, stock and station and business agent's licence must complete to become eligible to be licensed.

Schedule 2 - *Registration of salespeople, units of competency in PRD01* - prescribes competency units as set out in the Property Development & Management Training Package – PRD01 approved by ANTA, which applicants for a real estate, stock and station and business certificate of registration must complete to become eligible to be registered.

Schedule 3 - *Terms applying to all agency agreements* - prescribes various terms that must be included in all agency agreements to promote transparency and accountability in agency agreements.

Schedule 4 - *Terms specific to agency agreements for sale of residential property* - prescribes specific terms that must be included in agency agreements for the sale of residential property.

Schedule 5 - *Terms specific to a buyers agent agency agreements* - prescribes specific terms which must be included in a buyers agent agency agreement.

Schedule 6 - *Terms specific to agency agreements for sale of rural land* - prescribes specific terms that must be included in agency agreements for sale of rural land.

Schedule 7 - *Terms specific to agency agreements for sale of business* - prescribes specific terms that must be included in agency agreements for sale of business.

Schedule 8 - *Rules of Conduct* - prescribes general rules of conduct for licensed agents and registered salespeople and property managers. Schedule 8.3 prescribes specific rules for real estate agents and registered salespeople, property managers and buyers' agents. Schedule 8.4 prescribes specific rules for stock and station agents and registered salespeople and property managers. Schedule 8.5 prescribes specific rules for business agents and salespeople they employ.