CPPREP4001
Prepare for professional practice in real estate

Training Manual

Disclaimer: *Any Acts and links to any sites including legislation, agencies, regulatory bodies etc are current as at October 2021 and must be updated by you if required.*

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Real Estate Licensing

PTA offer training for the following OFT (Qld) licenses:

- Real Estate Salesperson
- Resident Letting Agents
- Real Estate Agent

Prepare for professional practice in Real Estate.

A real estate business is generally referred to as a Real Estate Agency. The person in charge of an Agency is a Real Estate Agent. A Real Estate Agent is licensed through the Office of Fair Trading. The employees of an Agency are usually Salespeople or Property Managers. Salespeople and Property Managers are registered with the Qld Office of Fair Trading as Salespeople. In some offices, persons with Real Estate Agents licences are also employed as salespeople. Auctioneers can also be employees of an agency. In most Agencies Salespersons refer to themselves as “Real Estate Agents” because they have been authorised by the licensee in charge to act on his or her behalf.

The Agent has a Fiduciary relationship with the client

This means that the agent must always act in “utmost good faith” on behalf of their client
The Agents first responsibility is to always act with the client’s best interest in mind at all times during the transactions.

Real Estate Agent Clients and Customers

- Vendors/sellers
- Purchasers/buyer
- Landlords/lessee
- Tenants/renter

The Client being Vendor/ Seller/ Landlord in an Agency Relationship

The client is one who engages the services of an agent with a written agreement
and to whom the agent should look to for payment of commission in return for services rendered.

The Customer being a Buyer/ Purchaser in an Agency relationship

A Customer is one who uses the services of an Agent

A customer does not appoint an agent – therefore they do not pay an agent for services provided. This is Not a Buyer's Agent.

The Tenant in an Agency relationship is person/s

That occupies property that is owned by an Investor/s and has signed a written agreement to pay rent and bond to the landlord with an Agent managing these tenants. There may be other parties involved with this arrangement being partner/s of Investor, Real Estate Agents Licensee and Property Manager Residential Tenancy Authority, Body Corporate with By Laws.

Real Estate Agents can also be involved with transactions with Commercial and Industrial property for sale or lease. This is a specialised area involving Commercial Sales and Leases, payment of Council rates and other outgoings costs the tenant must pay for during lease. With pending sale of this property – Agents will be aware of obligations with Landlord and Tenants.

Other parties that could be involved with Real Estate transactions could be Finance or Insurance Companies, Lawyers, Banks, Tradespeople (building/pest inspectors).

Licensing and eligibility Requirements

Qld Licensing Body

The Office of Fair Trading (Queensland) is the organisation that approves and grants real estate licences.

www.qld.gov.au

The Queensland Office of Fair Trading receives and makes decisions on applications for both licensing and registration of agents and their employees.

Licensing with OFT

https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/regulated-industries-licensing-and-legislation/property-industry-regulation

Licensing Categories

There are several licensing categories relating to the property industry in Queensland – refer to Qld Office of Fair Trading:

- Real Estate Agent - Limited Real Estate Agent - Affordable Housing

- Resident Letting Agent - Real Estate Salesperson - Auctioneer - Chattel Auctioneer

Queensland property industry training competencies

Office of Fair Trading

Real Estate Salesperson

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate
CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4101	Appraise property for sale or lease
CPPREP4102	Market property
CPPREP4103	Establish vendor relationships
CPPREP4104	Establish buyer relationships
CPPREP4105	Sell property
CPPREP4121	Establish landlord relationships
CPPREP4123	Manage tenancy

Real Estate Agent

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate

CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4101	Appraise property for sale or lease
CPPREP4102	Market property
CPPREP4103	Establish vendor relationships
CPPREP4104	Establish buyer relationships
CPPREP4105	Sell property
CPPREP4121	Establish landlord relationships
CPPREP4122	Manage tenant relationship
CPPREP4123	Manage tenancy
CPPREP4124	End tenancy
CPPREP4125	Transact in trust account
CPPREP4506	Manage off-site and lone worker safety in real estate
CPPREP5006	Manage operational finances in the property industry
CPPREP5010	Manage customer service activities in the property industry
CPPREP4503	Present at hearings in real estate

Limited real estate agent licence – Business Letting

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate
CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4125	Transact in trust accounts
CPPREP4231	Manage commercial property maintenance
CPPREP4232	Manage commercial property financial reports
CPPREP4233	Manage lessee relationships - commercial
CPPREP4234	Manage lessor relationships – commercial
CPPREP4235	End commercial property lease

Limited real estate agent licence – Affordable Housing

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate

CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4502	Support providers of social and community housing

Resident Letting Agents

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate
CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4101	Appraise property for sale or lease
CPPREP4102	Market property
CPPREP4121	Establish landlord relationships
CPPREP4122	Manage tenant relationships
CPPREP4123	Manage tenancy
CPPREP4124	End tenancy
CPPREP4125	Transact in trust accounts
CPPREP4181	Manage onsite residential property
CPPREP5006	Manage operational finances in the property industry
CPPREP4503	Present at hearings in real estate

Auctioneer

CPPREP4001	Prepare for professional practice in real estate
CPPREP4002	Access and interpret ethical practice in real estate
CPPREP4003	Access and interpret legislation in real estate
CPPREP4004	Establish marketing and communication profiles in real estate
CPPREP4005	Prepare to work with real estate trust accounts
CPPREP4161	Undertake pre-auction processes
CPPREP4162	Conduct and complete sale by auction
CPPREP4163	Complete post-auction process and contract execution
CPPREP4125	Transact in trust accounts
CPPREP5006	Manage operational finances in the property industry

Chattel Auctioneer

CPPREP4505 or	Value good, chattels, plant and equipment **or** Conduct livestock auctions

CPPREP4508	
CPPREP4509	Auction goods, chattel or equipment
CPPREP4125	Transact in trust accounts

Conditions of Licensing

- You must complete all the necessary Training Units and meet Qld OFT requirements
- You must pay the relevant fee
- Licenses must be renewed every 1 or 3 years and you must pay the relevant fee
- You must abide by suitability and eligibility requirements

What a real estate agent licence authorises

(1) A real estate agent licence authorises the holder of the licence to perform the following activities as an agent for others for reward:

(a) to buy, sell (other than by auction), exchange or let real property or interests in real property;

(b) to buy, sell (other than by auction), exchange, or let businesses or interests in businesses;

(c) to negotiate for the buying, selling, exchanging, or letting of something mentioned in paragraph (a) or (b);

(d) to collect rents.

(2) A real estate agent may perform the activities mentioned in subsection (1) in the carrying on of a business, either alone or with others, or as an employee of someone else.

What an auctioneer licence authorises

(1) An auctioneer licence authorises the holder of the licence to—

(a) sell or attempt to sell or offer for sale or resale any real property, or an interest in real property, by way of auction as an agent for others for reward; and

(b) sell the property or interest by any means during the auction period; and

(c) sell or attempt to sell or offer for sale or resale goods by way of auction if the sale or resale is directly connected with a sale by auction of a place of residence or land performed by the auctioneer.

(2) For subsection (1)(c), an auction of goods may be directly connected with a sale by auction of a place of residence or land despite the auction of the goods being conducted separately from the auction of the place of residence or land.

Example: An auction of a place of residence followed by an auction of the contents of the residence.

(3) An auctioneer may perform an activity mentioned in subsection (1)—

(a) in the carrying on of a business, either alone or with others; or

(b) as an employee of a property agent.

(4) In this section—

auction period, for an auctioneer for the sale of real property, means the period for which the auctioneer is appointed under section 102 or otherwise authorised or permitted under this Act or another Act to sell the property.

What a resident letting agent licence authorises

(1) A resident letting agent licence authorises the holder of the licence to perform the following activities as an agent for others for reward—

(a) letting lots in a building complex;

(b) collecting rents for lots in a building complex.

(2) A resident letting agent may perform the activities in the carrying on of a business, either alone or with others, or as an employee of someone else.

Note: There is also a sub category for “limited real estate agent’s licence” which applies to agents who manage shopping centres.(business letting)

Refer to the Property Occupations Act 2014 for further details on:

- Suitability for Licence (Property Occupations Act 2014)
  Sec 34 Suitability of applicants and licensees—individuals
  Sec 35 Suitability of applicants and licensees—corporations

- Eligibility for Licence
  45 Eligibility for property agent licence
  46 Eligibility for resident letting agent licence

- Registration of Employees

- Suitability for Registration
  120 Suitability of applicants

- Eligibility for Registration
  127 Eligibility for registration as real estate salesperson

- Sec 99 Property agent and resident letting agent must not act for more than 1 party

Legislative Requirements

The property industry and its agents are controlled by a complex set of rules based on common law, equity and statute law. The Australian legal system has its base in the English legal system.

Legislation

Property Occupations Act 2014
regulates Real Estate Agents' practices in Queensland

Agents Financial and Administration Act 2014

Residential Tenancies and Rooming Accommodation Act 2008

The property industry in Queensland is governed by the particular statutory legislation of the ***Property Occupations Act 2014*** and the ***Property Occupations Regulations 2014,*** as well as other Acts listed below.

In Queensland, the Office of Fair Trading, within the Department of Justice and Attorney General (DJAG), is the regulatory body that administers legislation governing the conduct of agents.

Other Queensland Legislation that impacts upon real estate agents activities:

Agents Financial Administration Act 2014	Invasion of Privacy Act 2011	Property Law Act 1974
Anti –Discrimination Act 1991	Land Act 1994	Property Occupations Act 2014
Body Corporate and Community Management Act 1997	Land Sales Act 1984	Queensland Building Services Authority Act 1991
Building Act 1975	Land Valuation Act 2011	
Building Fire Safety Regulation 2008	Legal Professions Act 2007	Queensland Heritage Act 1992
Electrical Safety Regulation 2013	Local Government Act 2009	Residential Tenancies and Rooming Accommodation Act 2008
Environmental Protection Act 1994	Manufactured Homes (Residential Parks) Act 2003	Sustainable Planning Act 2009
Fair Trading Act 1989	Native Title (Queensland) Act 1993	Work Health & Safety Act 2011
Foreign Ownership of Land Register Act 1988	Neighbourhood Disputes (Dividing Fences and Trees) Act 2011	

Some Commonwealth Legislation that impacts upon real estate agents activities:

Anti-Money Laundering	Fair Work Act 2009	Privacy Act 1988

and Counter-Terrorism Financing Act 2006		
Competition and Consumer Act 2010	Financial Transaction Reports Act	Spam Act 2003
Do Not Call Register Act 2006	Native Title Act 1993	

Roles and responsibilities of key personnel

Agency – Principal Relationship

The concept of Agent or Agency in general terms refers to the relationship which arises between three parties, where one party - the agent - is authorised to represent another party - the principal - by entering into a relationship with a third party on the principals' behalf.

In real estate transactions, the contract of agency describes the relationship formed when the principal (usually the owner of the property) appoints the agent to arrange a transaction on behalf of the principal. Any contract which results (either a contract of sale or a tenancy agreement) is generally binding on the principal, and not the Agent.

Therefore the relationship which exists between the real estate agent and the property owner is very significant, both from a business and a legal viewpoint.
An agent is required by law to do the following:

- follow the instructions of his/her principal;
- act in good faith at all times, keeping the principal's interest foremost and exercising due skill and care in carrying out the tasks involved;
- keep the necessary books of account - in particular a 'trust account' which holds principals' monies entrusted to agents during the course of transactions; and
- keep the principal informed of all relevant information.

A 'fiduciary' relationship exists between the principal and the agent. A 'fiduciary' at law is a person in a position of trust, who must take all care to ensure that the trust relationship is not breached in any way. Should an agent not perform with all care and diligence in carrying out the tasks necessary, the agent can be sued for negligence by the principal to recover any financial loss or damage suffered by the principal as a result.

Agency Instructions

Whatever service or transaction a real estate agent is to perform on behalf of a principal, the instructions to act as an agent must be in a written form. These are known as an Appointment to Act, and include among other instructions, details on the agent's entitlement to commission. The Property Occupations Act provides for appointments to act to be in the approved form. (POA Form 6). A full explanation of their use is provided in later units.

What is trust money?

It is money received or held by a real estate agent, an agent's representative or any member of an estate agent's staff on behalf of any other person in the course of an estate agent's business as an estate agent.

It must be recorded in the estate agent's trust accounting records and paid into the agent's trust account with an authorised financial institution.

Examples: Deposits on sales

- Pre-paid advertising and marketing expenses
- Rent collected and other outgoings on rented property

Any other money received in the course of other businesses conducted by a real estate agent, such as agencies for bank and building societies, is not money received in the course of acting as an estate agent and thus is not trust money under the Act.

If the Principal Licensee is unable to supervise the agency for not more than 30 days, they <u>may appoint an adult</u> as the licensee's substitute licensee for a period of <u>not more than 30 days</u> only if the adult consents to the appointment; and if the licensee is required as a condition of the licensee's licence to hold insurance—the adult is covered by the insurance or holds insurance that complies with the requirements of the condition. The principal licensee must ensure—the appointment and the substitute licensee's consent to the appointment <u>are in writing and states the period of appointment</u>; and the appointment, consent and evidence of any insurance the substitute licensee is required to have are— (i) kept at the licensee's registered office; and are made available for immediate inspection by an inspector who asks to see them.

Other Legal Responsibilities of an Agent

An agent does not have a legal relationship with other parties involved in a transaction apart from the principal. However common law does impose a <u>*duty of care*</u> with respect to third parties (i.e. buyers and tenants), to provide them with accurate information. As well, legislation is in place requiring them to comply with normal Fair Trading regulations. In other words, third parties to real estate transactions are consumers and have a right to be treated accordingly.

Consumer Protection

The real estate industry has traditionally served the interests of the client in a property transaction. In most residential transactions, this has been the property owner. This relationship between the agent and the client is founded in common law, where the agent has a duty of care and utmost good faith to his or her client. However, modern society requires an agent to exercise similar responsibilities when also dealing with customers, who are traditionally tenants and buyers. The Property Occupations Act 2014 reflects modern consumer law and requires an agent to act professionally and treat all clients and customers in a transaction fairly and with a high degree of accountability and skill.

Key operations of estate agencies

Real Estate Services

Residential sales
Residential Property Management
Business Development
Commercial/Industrial/Retail Property Management and Sales
Auctioneering
Buyers Agent
Stock and Station Agent
Business Broker

Depending on the location and type of real estate product available in an area, there is a wide range of occupations available within the real estate industry, albeit not always within the one office. Some of these include:

- **Real Estate Agent**

A real estate agent is any person who is licensed to own, operate or manage a real estate business. In most offices, the main function of a real estate agent is to administer the day to day affairs of the office. We know that legally, an agent is a person who as an agent for his/her principal undertakes or carries on the business of selling, exchanging or letting of houses, land or businesses of any kind. As such, the agent also accepts responsibility for the operation of his/her entire agency and staff, in accordance with the provisions of the Property Occupations Act 2014.

WHAT YOU CAN DO WITH YOUR LICENCE
Real Estate Agent

Title: Principal Licensee

The ownership of the real estate business is established with all personnel employed by the Principal of the Real Estate Office. Traditionally the Principal is the owner and licensee of the real estate office and is responsible for all staff, expenses and legal obligations performed by staff.

WHAT YOU CAN DO WITH YOUR LICENCE
Real Estate Sales Person

Title: Property Manager
The property management department of a real estate office is primarily concerned with the letting and ongoing management of properties on behalf of client landlords. It is your agency's role to maximise the return to your client.

WHAT YOU CAN DO WITH YOUR LICENCE
Real Estate Sales Person

Title: Residential Sales

Property appraisal, listings, marketing, residential sales.

Real Estate Salesperson

The Real Estate Salesperson is a person who is registered under requirements of the Property Occupations Act 2014 to be employed by an agent to carry out any of the functions of a real estate agent.

The following list details the functions which can only be performed by a licensed agent or registered salesperson under the Act:

- the acquisition of properties for sale (obtaining new listings);
- providing market appraisals (an estimate of the expected sales price);
- conducting marketing activities such as writing advertisements, designing and distributing brochures or conducting open for inspections;
- inspecting properties for sale or rent with potential buyers or tenants; and
- negotiating any aspect of a sale or leasing transaction.

Property Management

The property manager is responsible to the real estate agent and to the landlords for the effective management and control of properties managed by the agency.

The property management role encompasses:

- obtaining new rental properties and building the ‘rent roll’;
- appraising rental properties and advising on achievable rental prices;
- finding and selecting suitable tenants;
- collecting and monitoring rental payments;
- regularly inspecting properties and reporting on their condition;
- arranging and supervising necessary repairs;
- accounting to landlords for rental monies paid; and
- the procedures associated with remedying breaches to tenancy agreements and the termination of tenancies.

Under the requirements of the Property Occupations Act 2014, the role of the property manager is included in the definition of salesperson, requiring the property manager to be registered in the same way as salespeople.

- **Corporate Support**

The types and number of people involved in corporate support within an agency will depend on the size and operation of that agency. The functions to be carried out will vary accordingly, as will the qualifications of the personnel involved. Types of activity include reception, clerical, accounting, secretarial, research, human resources and a variety of other support activities. In a small agency all of these functions may be performed by one person - as agencies grow in size then additional support staff will be employed and roles will become more focused.

- **Specialist salespeople or consultants**

Depending on the focus of the agency, and the area in which it is operating, an agency may also employ specialist salespersons to handle a particular area of practice.

Specialised real estate activity may include commercial or industrial sales and leasing, home unit or land project marketing, investment sales or business sales.

- **Business Broking**

In addition to the property transactions discussed earlier, real estate agents in Queensland are also able to sell businesses on behalf of the owner/seller. Agents specialising in business transactions are referred to as 'business brokers'.

A business is a commercial operation and can range from a corner store to a large manufacturing or service organisation. The sale of a business includes the 'goodwill' factor. This is its reputation and client base, built up over years, which in turn translates into a certain minimum profit expectation. Plant, equipment, chattels, stock and other assets also form part of businesses.

The sale of a business can be quite distinct from the sale of business premises. For example, consider the case where the business operates from leased premises. In these circumstances, the sale of the business would involve the sale of its goodwill and assets while the sale of the real estate or freehold would involve the sale of the land or buildings which the business occupies.

- **Buyer's Agent**

This is a relatively new concept. In today's market buyers are appointing agents to act for them to source a property or to bid at auction. It is lawful for there to be two agents in a transaction, one acting for the seller and one acting for the buyer. Both will be paid commission by their respective clients (principals).

- **Sales Manager**

The Sales Manager of a real estate office accepts responsibility for the motivation, training and leadership of the sales team to ensure maximum profitability and efficiency in the day to day operation of the real estate sales team.

- **Auctioneer**

Auctions for the sale of any real property can only be conducted by a person who is a licensed property auctioneer (ie in accordance with the Property Occupations Act 2014.

- **Stock and Station Agents**

Licensed Stock and Station Agents can provide Service to Value goods, chattels, plant and equipment or Conduct livestock auctions They can also Auction goods, chattel or equipment. They cannot Auction Real Property.

Key practices of an Agency

- **Residential Sales**

Real Estate Agents, Licensee and Sales persons are responsible for All Residential Sales with in Real Estate Office. This role is based on obtaining Listings to Sell Property, Conduct Due care and diligence with preparing Sales Information and present property to prospective Buyers.

- **Property Management**

Based on most agencies relying on constant Income from Property Management – this is important role within the Agency. This does involve dealing with Landlords, Tenants and Maintenance of property on behalf of Landlords. Rent is collected from Tenants and banked in Agents Trust Account for payment to Landlords.

Auctions

A sale formed on the fall of the auctioneers hammer or a follow-up sale after an unsuccessful auction (before 5pm on the second business day after the auction), in which the buyer was a registered bidder.

- **Business Development**

The ongoing success of a Real Estate Agency is to have constant Business development with in an Agency. This could entail –

1. Monitoring Competitors in your local area
2. Keeping abreast of Legislation changes that would affect the Agency
3. Regular Staff Meeting and Professional Development Training and Courses
4. Ongoing Marketing and Promotion of Agency

Forms of Business Ownership

There are three ways in which a business may be owned and operated by a licensed real estate agent:

- Sole Trader
- Partnership
- Company (corporation)

Sole Trader

An individual proprietorship is the oldest and simplest form of business organisation. A person who owns their own business is known as a sole trader or proprietor. Anyone capable of contracting can operate a business as a sole proprietor, subject to any legal requirements laid down for a specific type of business (eg licensing). The essential characteristic of a sole trading business is that it has no separate legal entity from that of its owner.

Partnership

A Partnership is defined as the relationship which exists between two or more persons carrying on business in common with a view to profit. Although 20 is a maximum number of people who may join together in a partnership, real estate partnerships usually have between two and six members.

The *Partnership Act* 1891 sets out the rights and obligations of partners in respect to the legality of partnership operations. .All partners carrying on the business of a real estate agent are required to be the holder of a real estate agents licence.

A partnership is not at law a separate legal entity. All partners are liable for the debts of the partnership business to the extent of their personal assets. The general rule for liability applying to partnerships is that all partners are both jointly and independently liable for the debts and obligations incurred by any member of the partnership acting in a normal business capacity. This means that should a creditor bring an action against the partners, if the assets of the firm are insufficient to pay the creditor, then each partner will have to contribute from his or her personal assets. This arrangement is known as joint unlimited liability. The property of the partnership (eg, business premises, furniture etc) is owned jointly by the partners.

Company (Corporation)

A company is a single legal entity quite distinct from the individual members who form the company. Because a company is a separate entity it follows that it can do many of the things which an ordinary individual can do at law. It can:

- make contracts which are binding;
- sue someone;
- be sued by someone;
- own and dispose of property; and
- sign legal documents

The effect of this is that the members of the company (the shareholders) do not have any liability for debts of the company apart from the cost of the shares. The company has what is known as limited liability. This can be contrasted with partnerships or sole traders which have unlimited liability, and where the partners or owners may be sued individually for the liabilities of the business.

The Property Occupations Act 2014 requires a corporation to hold a corporate real estate licence. A licensed real estate agent must be in charge of a corporation's principal place of business. This person need not be a director of the corporation. A real estate agent or a real estate agent corporation can have a registered salesperson in charge of another place of business.

Organisational Structure

Having established an appropriate form of ownership of the business (sole trader, partnership, or company) a real estate agency must then decide whether it is going to operate independently or whether it is going to collaborate in some way with other real estate agencies. There are three ways in which an agency may establish its operation:

Independent Agency

The estate agency operates totally independently and has no permanent formal ties with other agents. The estate agency may form links or marketing arrangements with other agents in regard to specific properties, but its overall operation is not linked with any other agent or organisation.

Franchise Groups

Under a real estate franchise arrangement a number of real estate agencies, called franchisees enter into an arrangement with a franchisor to carry on the business under the franchisor's name. This right to use the name is often given exclusively for a set territorial area. In return the franchisor receives a share of the franchisee's business income. In practice, the fee or royalty paid by the franchisee is generally a percentage of turnover or sales commission and is generally paid monthly. Franchise fees in Australia are usually paid on gross commission and are in the range of 5-10%.

Franchisors provide services to their franchisees including training, business systems and advice, auctioneers, marketing systems, documentation systems, and a corporate image. The franchisor, therefore, is selling a name, an image and a way of doing business to a franchisee for the purpose of making a profit. The rights and obligations of the relationship are defined by a written contract between the two parties known as a franchise agreement.

Examples of franchise groups in Queensland include Ray White, LJ Hooker, Raine & Horne, PRD Realty.

Marketing Groups

In contrast to the franchise groups a marketing group is a non-profit group of independent real estate agencies who join together to benefit from common advertising, marketing practices, common name, and economics of scale in the purchase of goods and services. Another benefit is marketplace recognition via a common logo.

A marketing group operates along similar lines to an industry association, with member agencies paying an annual membership fee consisting of a fixed amount rather than a percentage of turnover or sales commissions. The group is administered by a committee consisting of members elected at an annual general meeting. The prime function of the committee is to direct expenditure on behalf of the group.

While members are required to comply with the group's advertising guidelines and membership rules for daily operations, each business is independently owned and operated with greater potential for the development of individual practices than is the case with a Franchise group.

The Professionals and First National are examples of marketing groups currently operating in Queensland.

Real estate industry regulators

Residential Tenancies Authority (RTA)

The RTA Is a state government statutory body for Queensland's residential rental sector that provides tenancy information, bond management, dispute resolution, investigation, and policy and education services.

Industry Regulators

- RTA (Residential Tenancies Authority)
- ACCC (Australian Competition & Consumer Commission)
- Foreign Investment Review Board

Australia's Foreign Investment Policy

The Foreign Investment Review Board is a non-statutory body stablished in April 1976 to advise the Australian Government on foreign investment policy and its administration.

The Foreign Investment Review Board examines proposals by foreign interests to undertake direct investment in Australia, including real estate, and makes recommendations to Government on whether those proposals are suitable for approval under the Government's policy.

Changes to Foreign Investment Arrangements

The Australian Government has made ongoing changes to the FIRB Rules and they are currently available to be studied in their entirety including, commercial property, plus business acquisitions at **www.firb.gov.au**

The Australian Competition and Consumer Commission (ACCC) is an independent statutory authority. It was formed in 1995 to administer the ***Competition and Consumer Act 2010*** and other acts.

The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure industries. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws.

The ACCC is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the Trade Practices Act and the state/territory application legislation.

In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies which administer the mirror legislation of their jurisdictions, and the Competition and Consumer Policy Division of the Commonwealth Treasury.

As well as education and information the ACCC recommends dispute resolution when possible as an alternative to litigation, can authorise some anti-competitive conduct, and will take legal action when necessary.

Real estate industry associations

ARAMA – Australian Resident Accommodations Managers Association

The Australian Resident Accommodation Manager's Association (ARAMA) is the peak body for the Management Rights Industry. ARAMA Mission: To serve the corporate and industry needs of members in order that ARAMA can properly represent the interests of all stakeholders and the resident accommodation industry as a whole.

Our members manage buildings for holiday letting, others manage permanent rental buildings and some have buildings that have a mixture of holiday and permanent letting.

The Real Estate Institute of Queensland (REIQ)

The Real Estate Institute of Qld was established in 1918 with the purpose of uplifting and maintaining the standards of real estate practice in Qld. Membership of the institute is voluntary, although the majority of agents recognise the benefits that membership provides.

Industry Associations

- ARAMA (Australian Resident Accommodation Managers Association)
- REIQ (Real Estate Institute of Queensland)

Employment in Real Estate

Award Conditions

Real Estate Agents are employed under different conditions. For example you may be employed under the Federal Government Real Estate Industry Award 2010

https://awardviewer.fwo.gov.au/award/version/MA000106?vn=14&rvn=14#P215_18996

Generally, administration/office staff will be employed under the Queensland State Government Clerks—Private Sector Award 2020.

Commissions

Sales Agents may be engaged on a Commission only basis. This is set between the agent and the Principal of the agency and is documented in a Workplace Agreement. The commission is generally divided between the Sales Agent and the Principal.

Employment in Real Estate

- Agents:
  - Real Estate Industry Award 2010
  - Commissions
  - Workplace agreements
- Office staff:
  - Clerks - Private Sector Award 2020
- National Employment Standards
- Professional Development requirements

Professional Development

Although not regulated as in other States (as at 2021), it is still best practice for agents to carry out Professional Development each year as it is anticipated Qld OFT will soon introduce this as a requirement for licensing. Industry Association seminars/functions/ meetings, in house training, tertiary and nationally recognised training all contribute to professional development activities.

National Employment Standards

Australian Government

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Introduction to the National Employment Standards

What are the National Employment Standards?

The National Employment Standards (NES) are the 10 minimum standards of employment which cover the following:

- Maximum weekly hours of work – 38 hours per week, plus reasonable additional hours.
- Requests for flexible working arrangements – certain employees can ask to change their working arrangement.
- Parental leave and related entitlements – up to 12 months unpaid leave and the right to ask for an extra 12 months unpaid leave. Also includes adoption-related leave.
- Annual leave – 4 weeks paid leave per year, plus an additional week for some shift workers.
- Personal/carer's leave, compassionate leave, and family and domestic violence leave – 10 days paid personal/carer's leave (pro rata for part-time employees), 2 days unpaid carer's leave as required, 2 days compassionate leave as required and 5 days unpaid family and domestic violence leave (in a 12-month period).
- Community service leave – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- Long service leave – paid leave for employees who have been with the same employer for a long time.
- Public holidays – a paid day off on a public holiday (unpaid for casuals), except where reasonably requested to work.
- Notice of termination and redundancy pay – up to 5 week's notice of termination and up to 16 weeks redundancy pay, both based on length of service.
- Provision of a Fair Work Information Statement – must be provided by employers to all new employees.

Who do the NES apply to?

The NES apply to all employees covered by the national workplace relations system, however only certain entitlements apply to casual employees.

These are:

- maximum weekly hours
- 2 days unpaid carer's leave and two days unpaid compassionate leave per occasion
- 5 days unpaid family and domestic violence leave (in a 12-month period)
- community service leave (except paid jury service)
- public holidays
- provision of the Fair Work Information Statement.

In addition, casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are entitled to:

- make requests for flexible working arrangements

- parental leave and related entitlements.

There are also two NES that apply to all full-time and part-time employees, whether they are covered by the national workplace relations system or not. These are:

- parental leave and related entitlements
- notice of termination.

How do the NES apply?

Terms in awards, registered agreements and employment contracts cannot exclude or provide for an entitlement less than the NES, and those that do have no effect. However, they can affect the operation of the NES in certain ways.

For example, they may specify terms that deal with:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave
- the cashing out of paid personal/carer's leave
- extra personal/carer's leave or annual leave in exchange for foregoing an equivalent amount of pay
- the substitution of public holidays
- situations in which redundancy entitlements do not apply.

They may also supplement the NES by providing entitlements that are more favourable for employees.

A contravention of the NES may result in penalties in excess of $13,000 (for an individual) or $66,000 (for a company). Penalty amounts are subject to change. You can check the current maximum penalties at www.fairwork.gov.au

CONTACT US

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

Last updated: November 2020

Glossary of common Real Estate Terms

Property Occupations Act 2014 (POA)	The Queensland legislation that regulates Real Estate Agents and Real Estate transactions.
The Office of Fair Trading (OFT)	An office within the Department of Justice and Attorney General (DJAG) that oversees the operation of POA.
Agent or Licensee	In real estate an agent is a person who is lawfully authorised to act on behalf of a principal to perform certain specific activities which affect the principal's rights and duties in relation to a third party. The agent must have written authority from the principal to act as his or her intermediary. (Many licensees also refer to themselves as the principal)
Principal	The principal in the real estate relationship is the person from whom the agent receives instructions, and on whose behalf the agent acts. The principal is usually the seller (sometimes called vendor) or landlord and is also the person who pays the agent for services provided.
Seller	In a real estate transaction the seller is the person who wishes to sell his or her property, (sometimes called the vendor) also known as client.
Buyer	The buyer is the person who acquires title to a property or an interest in the property, (sometimes called purchaser) also known as customer
Tenant	This is a person who has legal permission to occupy the owner's property, land or buildings, subject to certain conditions such as payment of rent - may also be referred to as the lessee.
Client	The party from whom the real estate agent has an appointment to act from. This is normally the seller or landlord but can also be the buyer or tenant.
Customer	This is generally a buyer or tenant. The customer is someone who uses the services of a real estate agent and does not pay fees to the agent.
CMA	Comparative Market Analysis: A method used to ascertain market value of a property by comparing it to similar properties that have recently sold and others that are currently for sale.
Listing	The recording of properties as being available for sale or rent. This term is also used to denote the property so listed.
Buyers' market	This is where a large number of people are wanting to sell their properties, but the number of buyers is relatively lower.
Caveats	Literally means beware. In real estate, it warns (prospective purchasers, mortgagees etc) who propose to deal in the land that a third person (normally the person lodging the caveat at the Registrar or Titles Office) has some right or interest in the land.
Farming area	A specific area or suburb where a real estate agent conducts

	ongoing prospecting activity in an attempt to 'cultivate' business relationships.
Appointment to Act	This is the paperwork completed by the client and the agent that details the terms of the appointment. The authority may be valid for a set period of time.
Private treaty	The sale of a property where the agent is appointed by the vendor to advertise the property for a price and facilitate negotiations between the buyer and seller to complete the sale of the property. This method of sale excludes auctions and tenders.
Property appraisal	The process by which an agent inspects a property and researches current market trends to come to an approximate market price for the property
Prospecting	To undertake activities in order to search for and explore future business opportunities. This may also be referred to as 'canvassing'.
Relevant contract	This means a contract for the sale of residential property in Queensland, other than a contract formed on a sale by auction.
Cooling Off Period	The cooling-off period, for a relevant contract, means a period of 5 business days— (a) starting on the day the buyer under the relevant contract receives a copy of the completed contract from the seller or the seller's agent. If the buyer receives a copy of the completed contract on a day other than a business day, the first business day after the day the buyer receives the completed contract; and (b) ending at 5 p.m. on the fifth business day. **Freehold land** - is fully owned by the registered proprietor (owner) and that person can dispose of his/her interest in the land (i.e. sell it) at any time.
Leasehold land	Is owned by an owner (often the State Government) who sells leasehold rights to a leaseholder. Many cattle properties in Queensland are leasehold arrangements with the State Government. In this situation, the leaseholder pays a fee to the Government and undertakes to upkeep and improve the land, and in return is allowed to graze stock and sell them for profit.
Sale by Auction	A sale formed on the fall of the auctioneers hammer or a follow-up sale after an unsuccessful auction (before 5pm on the second business day after the auction), in which the buyer was a registered bidder
Easement	An Easement is a right that a person or entity, such as the Council, has over property owned by someone else. It is a right to use the land for a specific purpose, for example to maintain sewer or water mains. The owner of the land may still use the land, so long as that use does not interfere with the rights specified. For example, you could not build a garage or pool on an easement for sewerage or water mains because that would

	deny the access specified. Because easements are an interest in part of a parcel of land, they have to be accurately measured and registered by the Registrar of Titles, just like any other interest in land. They are, in fact, an "encumbrance" on the original land title. Additional Information **What are easements used for?** An easement can be granted for almost anything. The most common is probably an easement for access, either to another block of land or to do something on the part of the land affected, e.g. maintain a water main. Other public utilities such as electricity, gas, sewerage etc also often have easements over land to locate their pipelines etc. **What is a Dominant Tenement?** Easements are part of a parcel of land and transfer with the land when it is sold to another person. For example, if a block of land does not have access to a road it may have an access easement across another property. The titles to both parcels of land would be noted as being affected by an easement and the first parcel would be the "dominant tenement" because it has the benefit of the easement. The second parcel is the "servient tenement" because it has to concede to the first with respect to the area of his land that the easement rights cover. Both parcels of land will remain in that relationship until the easement is removed; no matter how many times either parcel is sold. **What is an Easement in Gross?** An easement in gross does not have a "dominant tenement". Instead of a parcel of land that benefits from the easement, the easement benefits a person or other entity. This is the type of easement your local Council might have to access a sewer main. **What are the implications?** The existence of an easement can have a positive or negative effect on the value of land, depending on whether it is the dominant or servient tenement. When buying land, you need to be aware of any easements and their extent because they may inhibit your ability to do what you want with the land. You need to also make sure you know all the rights and obligations that are specified in the easement documents