

1990 - No. 326

**AUCTIONEERS AND AGENTS ACT 1941 - REGULATION**

(Relating to changes arising as the result of  
constitution of the Real Estate Services Council)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Auctioneers and Agents Act 1941, has been pleased to make the Regulation set forth hereunder.

JOE SCHIPP  
Minister for Housing.

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**Commencement**

1. This Regulation commences on 15 June 1990.

**Amendments**

2. The Auctioneers and Agents Regulations are amended:
  - (a) by inserting in Regulation 2, in alphabetical order, the following definitions:

"**Council**" means the Real Estate Services Council constituted by the Real Estate Services Council Act 1990;

"**General Manager**" means the person for the time being holding or acting in the office of the General Manager of the Council;
  - (b) by omitting Regulations 3 (2) and 3A-13 and by inserting instead the following Regulation:

**Maintenance of registers etc.**

4. The Council must ensure that the registers and supplies of the forms and other documents required to be used by the Act and these Regulations are kept and maintained in an up-to-date state.

- (c) by omitting from Regulation 15 (1) the matter “, 54 (2) (d)”;
- (d) by omitting from Regulations 16 (9) and 17 the word “Registrar” wherever occurring and by inserting instead the word “Council”;
- (e) by omitting from Regulation 16 (9) the word "him" and by inserting instead the words "the Council";
- (f) by omitting Regulation 18 (1);
- (g) by omitting from Regulations 18 (2) and 19 the word “Registrar” wherever occurring and by inserting instead the word "Council";
- (h) by omitting from Regulation 19 (3) the word "he" and by inserting instead the words "the Council";
- (i) by omitting Regulation 20 and by inserting instead the following Regulation:

**Notice of Council's decision to be given**

20. When the Council notifies an applicant in writing of its decision under section 39AA (3) or 52A (3) of the Act, the Council must at the same time and in the same manner notify the superintendent of licences appointed under section 106 (1) of the Liquor Act 1982 of that decision.

- (j) by omitting from Regulation 20A the words "clerk of the court of petty sessions" wherever occurring and by inserting instead the words "Clerk of the Local Court";
- (k) by omitting from Regulation 20A (2) the word "Registrar" wherever occurring and by inserting instead the word "Council";
- (l) by omitting from Regulation 21 (a) the matter “\$4,000” and by inserting instead the words "40 penalty units";
- (m) by omitting from Regulation 21 (b) the matter “\$2,000” and by inserting instead the words "20 penalty units";
- (n) by omitting Regulations 22-43;
- (o) by omitting from Regulation 45 the words “Court of Petty Sessions” and by inserting instead the words "Local Court";
- (p) by omitting from Regulation 45 the word "Registrar" wherever occurring and by inserting instead the word “Council”;

- (q) by omitting Regulation 48 and by inserting instead the following Regulation:

**Furnishing of particulars of trust account or transactions**

48. A licensee served with a requisition under section 38A (1) of the Act must furnish the required statement in writing:

- (a) by delivering the statement to the General Manager, or a member of the staff of the Council nominated by the General Manager for the purpose of receiving such statements, at the address of the Council appearing in the requisition; or
  - (b) by sending the statement by certified mail to the General Manager at the address of the Council appearing in the requisition so as to be received, by the General Manager or a member of staff so nominated, within 7 days after service of the requisition.
- (r) by omitting from Regulation 48A the words "Council of Auctioneers and Agents" and by inserting instead the words "Real Estate Services Council";
- (s) by omitting Regulation 49 (a) and by inserting instead the following clause:
- (a) A demand in writing under section 38A (3) of the Act must be made by serving notice of the demand on the licensee concerned:
    - (i) by delivering the notice to the licensee; or
    - (ii) by sending the notice to the licensee by certified mail addressed to the licensee at the registered office of the licensee within the meaning of the Act; or
    - (iii) in any of the ways provided by section 86B of the Act for the service of documents.
- (t) by omitting Regulation 50 and by inserting instead the following Regulation:

**Review of commissions, fees etc.**

50. (1) An application to the Council under section 42A (4) of the Act to review a statement of claim or itemised account must be lodged in duplicate with the Council together with the statement of claim or itemised account concerning which the application is made.

(2) The application (and the statement of claim or itemised account in duplicate) must, within the period of 28 days allowed by section 42A of the Act for applying for the review, be lodged:

- (a) by delivering those documents to the General Manager, or a member of the staff of the Council nominated by the General Manager for the purpose of receiving such applications, at an office of the Council; or
- (b) by sending the documents by certified mail to the General Manager at an office of the Council so as to be received, by the General Manager or a member of staff so nominated, within the period of 28 days.

(3) The Council must, on receipt of the application, forward the duplicate of the application to the licensee concerned by certified mail, addressed to the licensee at the registered office of the licensee within the meaning of the Act.

- (u) by omitting Regulation 50A and by inserting instead the following Regulation:

**Certificate under section 42A (5)**

50A. A certificate under section 42A (5) of the Act is to be issued under the seal of the Council and is to contain the following particulars:

- (a) the name of the person applying for the review;
  - (b) details of the statement of claim or itemised account in respect of which the review is requested, including the amount involved and the name of the licensee who served the statement of claim or itemised account on the person applying for the review;
  - (c) the amount which the Council certifies, on the review, to be a reasonable remuneration by way of commission, fee, gain or reward for the services performed by the licensee in connection with the transaction or reimbursement for expenses or charges incurred in connection with the transaction to which the statement of claim or itemised account relates;
  - (d) the date on which it was executed under the seal of the Council.
- (v) by omitting Regulation 52 and by inserting instead the following Regulation:

### **Levies**

52. A notice to a licensee or real estate dealer to pay a levy imposed under section 72 (1) of the Act is a prescribed notice for the purposes of section 72 (3) of the Act if the notice is signed by the General Manager on behalf of the Council and contains the following particulars:

- (a) the date of the resolution of the Council to impose the levy;
  - (b) the amount of the levy payable by the licensee or real estate dealer;
  - (c) the date by which and the manner in which the amount of the levy is payable;
  - (d) a note, in terms of section 72 (3) of the Act, as to the consequences of a failure by a licensee or real estate dealer to pay the levy
  - (e) the date on which it was signed by the General Manager.
- (w) by omitting Regulation 53;
- (x) by omitting from Regulation 58A (1) the words "public accountant registered under the Public Accountants Registration Act 1945, furnishes to the Council a certificate in the form of Form No. 32 to these Regulations" and by inserting instead the words "registered company auditor (within the meaning of the Companies (New South Wales) Code) furnishes to the Council a certificate in the form approved by the Minister";
- (y) by omitting from Regulation 58A (1) the words "such accountant" and by inserting instead the words "such auditor";
- (z) by omitting from Regulation 58A (2) (a) the words "of Form No. 32 to these Regulations was furnished to the Council unless prior to such date a public accountant registered under the Public Accountants Registration Act 1945, examines the books of account of such licensee and furnishes a certificate to the Council in the form of Form No. 33 to these Regulations" and by inserting instead the words "approved by the Minister was furnished to the Council unless prior to that date a registered company auditor (within the meaning of the Companies (New South Wales) Code) examines the books of the licensee and furnishes a certificate to the Council in the form approved by the Minister";

- (aa) by omitting from Regulation 58A (2) (b) the words "public accountant registered under the Public Accountants Registration Act 1945, and a certificate in the form of Form No. 33 to these Regulations" and by inserting instead the words "registered company auditor (within the meaning of the Companies (New South Wales) Code) and a certificate in the form approved by the Minister";
- (bb) by omitting Regulation 67 and by inserting instead the following Regulation:

**Records etc. to be in English language**

67. All records made or produced, and all entries in books of account kept by a licensee, in accordance with the provisions of the Act and these Regulations, must be in the English language.

- (cc) by omitting from Schedule 1, Form Nos. 1-4, 8-11, 15, 17-24, 26, 26A and 27-33;
- (dd) by omitting from Form No. 26B in Schedule 1 the words "Court of Petty Sessions" wherever occurring and by inserting instead the words "Local Court";
- (ee) by omitting from Form No. 26B in Schedule 1 the word "Registrar" and by inserting instead the words "General Manager";
- (ff) by omitting from Form No. 26B in Schedule 1 the words "Clerk of Petty Sessions" and by inserting instead the words "Clerk of the Local Court";
- (gg) by omitting from Form No. 26B in Schedule 1 and clause 26 (2) of the Rules of Conduct in Schedule 2 the words "Council of Auctioneers and Agents" and by inserting instead the words "Real Estate Services Council";
- (hh) by inserting in clause 29 of the Rules of Conduct in Schedule 2 after the word "section" the matter "5AA or";
- (ii) by omitting from clause 29 (a) of the Rules of Conduct in Schedule 2 the words "clerk of petty sessions" where firstly occurring and by inserting instead the words "Clerk of a Local Court";
- (jj) by omitting from clause 29 (a) of the Rules of Conduct in Schedule 2 the words "clerk of petty sessions" where secondly occurring and by inserting instead the words "that Clerk".

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**EXPLANATORY NOTE**

The object of this Regulation is to make such changes to the Auctioneers and Agents Regulations made under the Auctioneers and Agents Act 1941 as are necessary in consequence of the amendment of that Act by the Real Estate Services Council Act 1990, and to update the Regulations in minor respects.

References to the Council of Auctioneers and Agents and to the Registrar appointed under the Auctioneers and Agents Act are replaced by references to the Real Estate Services Council.

Provisions dealing with requirements which are to be dealt with by or under the Real Estate Services Council Act are deleted from the Regulations as are obsolete provisions concerning the election of members of the Council of Auctioneers and Agents.

References to forms which are to be approved by the Minister, rather than prescribed, are deleted.

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