



New South Wales

# **Property, Stock and Business Agents Amendment (Property Reports and Exemption) Regulation 2016**

under the

**Property, Stock and Business Agents Act 2002**

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property, Stock and Business Agents Act 2002*.

VICTOR DOMINELLO, MP  
Minister for Innovation and Better Regulation

## **Explanatory note**

The object of this Regulation is to amend the *Property, Stock and Business Agents Regulation 2014*:

- (a) to require a real estate agent for the sale of a residential property:
  - (i) to record reports of certain inspections and financial certificates, and
  - (ii) to disclose those records to a person requesting a copy of the contract for the sale of the property, and
- (b) to exempt a real estate agent from the operation of the *Property, Stock and Business Agents Act 2002* when carrying out certain activities, and
- (c) to reinstate a provision that requires an agency agreement for the sale of a residential property to specify the price at which the property is to be offered, and
- (d) to effect law revision.

This Regulation is made under the *Property, Stock and Business Agents Act 2002*, including sections 4 (1), 22, 55 and 230 (the general regulation-making power).

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### **1 Name of Regulation**

This Regulation is the *Property, Stock and Business Agents Amendment (Property Reports and Exemption) Regulation 2016*.

### **2 Commencement**

This Regulation commences on 15 August 2016 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Property, Stock and Business Agents Regulation 2014

### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

***affiliate***, in relation to an entity (***the entity***), means:

- (a) another entity that is controlled (within the meaning of section 50AA of the Corporations Act) by the entity, or
- (b) if the entity is a body corporate—an entity that is a related entity of the entity.

***commercial property agency work*** means selling, purchasing, exchanging, leasing, managing or otherwise dealing with property that is not residential property or rural land.

***entity*** and ***related entity*** have the same meanings as in section 9 of the Corporations Act.

### [2] Clause 10 Professional indemnity insurance

Omit the definitions of ***affiliate*** and ***commercial property agency work*** from clause 10 (9).

### [3] Clause 33A

Insert after clause 33:

#### 33A Records of property reports to be kept by real estate agents

(1) A licensee acting on behalf of a person (***the client***) on the sale of a residential property must make a written record, in accordance with subclauses (3) and (4), of any report of which the licensee is aware in respect of:

- (a) a building inspection of the property, or
- (b) an inspection to detect whether or not the property is affected by termites or other pests, or
- (c) an inspection of documents relating to the property under section 108 of the *Strata Schemes Management Act 1996*, or
- (d) a certificate as to financial matters under section 109 of the *Strata Schemes Management Act 1996*, or
- (e) an inspection of documents relating to the property under section 26 of the *Community Land Management Act 1989*.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

(2) The licensee must disclose any record made under this clause to any person requesting a copy of the contract for the sale of the property.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

(3) A record of a report under this clause must contain the following particulars:

- (a) the date on which the property or documents relating to the property were inspected for the purposes of the report,

- (b) whether the person who requested the report to be prepared is the client, a prospective purchaser of the property or the licensee,
- (c) the name, business address and telephone number of the person who prepared the report,
- (d) whether the report is or is not available for repurchase by any person requesting a copy of the contract for the sale of the property,
- (e) whether the person who prepared the report is insured under a policy of professional indemnity insurance.

- (4) A licensee is not required to make a record of any particulars referred to in subclause (3) that are not known to or cannot be reasonably obtained by the licensee.
- (5) For the purposes of this clause, or any other law, a licensee is taken to have the authority to make any disclosure required for the purposes of this clause.

**[4] Clause 46A**

Insert after clause 46:

**46A Exemption for persons acting as real estate agents for certain properties**

For the purposes of section 4 (1) of the Act, a real estate agent is exempt from the operation of all of the Act in respect of any act or omission by the agent when undertaking commercial property agency work on behalf of:

- (a) an affiliate of the agent, or
- (b) an entity that owns (whether or not together with an affiliate of the entity) any property that has:
  - (i) an aggregate market value of \$40 million or more, or
  - (ii) an aggregate gross floor area of 20,000 square metres or more.

**[5] Schedule 8 Terms specific to agency agreement for sale of residential property**

Insert after clause 4:

**5 Price at which property is to be offered**

If the agreement provides for the property to be offered for sale by private treaty, the agreement must specify the price at which the property is to be offered.