New South Wales

Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004

under the

Property, Stock and Business Agents Act 2002

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

REBA PAIGE MEAGHER, M.P.,

Minister for Fair Trading

Explanatory note

The object of this Regulation is to specify rules of conduct in relation to the practice of listing persons on tenant databases. The rules of conduct are to be observed by real estate agents engaged in property management and on-site residential property managers (as well as by their employees who are registered persons). The failure to observe such a rule is an offence under clause 11 (4) of the *Property, Stock and Business Agents Regulation 2003*.

This Regulation is made under the *Property, Stock and Business Agents Act 2002*, including sections 37 (Rules of conduct for licensee's business) and 230 (the general regulation-making power).

Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004

under the

Property, Stock and Business Agents Act 2002

1 Name of Regulation

This Regulation is the *Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004*.

2 Commencement

This Regulation commences on 15 September 2004.

3 Amendment of Property, Stock and Business Agents Regulation 2003

The *Property, Stock and Business Agents Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 11 Rules of conduct

Omit "Schedules 1–6" from clause 11 (1) and (2) wherever occurring.

Insert instead "Schedules 1–6A".

[2] Clause 11 (1) (g)

Insert after clause 11 (1) (f):

> (g) Schedule 6A applies to real estate agents engaged in property management and on-site residential property managers, and registered persons they employ.

[3] Schedule 6A

Insert after Schedule 6:

Schedule 6A Rules specific to residential property managers

(Clause 11)

Note.

Clause 11 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

1 Definitions

In this Schedule:

database operator means the person who operates a tenant database.

list a person on a tenant database means give personal information about the person to the database operator for entry on the database.

listed person means a person whose personal information is listed on a tenant database.

personal information means:

(a) the name of a natural person, and

(b) any information (including an opinion) about the person that relates to, or arises from, the occupation of

residential premises by the person under a residential
tenancy agreement.

residential tenancy agreement has the same meaning as in
the *Residential Tenancies Act 1987*.

tenant database means a database containing personal
information, but does not include any such database kept by
an agent for use only by that agent.

Tribunal means the Consumer, Trader and Tenancy Tribunal.

2   Application of Schedule

This Schedule does not apply in relation to the listing of a
person on a tenant database if the listing occurred before the
commencement of this Schedule.

**3   Disclosure by agents of collection and use of personal
information for listing on tenant database**

An agent must, at the time the agent enters into a residential
tenancy agreement with any person, advise the person that
personal information about the person may, if the person is to
be listed by the agent on a tenant database in accordance with
clause 4, be used and disclosed by the agent for the purposes
of that listing.

4   Restrictions on listing persons on tenant database

(1)   An agent must not list a person on a tenant database unless:

    (a)   the person was a tenant under a residential tenancy
agreement in respect of which the agent provided
property management services, and

    (b)   the residential tenancy agreement has been terminated
in accordance with section 53 of the *Residential
Tenancies Act 1987*, and

    (c)   the person is listed on the database for a reason referred
to in subclause (2), and

    (d)   the agent has given the person written notice of the
agent's intention to list the person and the reason for
doing so, and

(e)   the person has been given a reasonable opportunity:

   (i)   to make submissions to the agent in respect of the proposed listing, and

   (ii)   to review or correct any personal information that is proposed to be listed on the tenant database, and

(f)   if the agent and the person disagree about the personal information to be listed—any objection by the person in relation to the information is noted on the database.

(2)   For the purposes of subclause (1) (c), any one of the following is a reason for listing a person on a tenant database:

(a)   the person owes the landlord an amount of money as a result of either or both of the following:

   (i)   failing to pay rent under the residential tenancy agreement,

   (ii)   any damage to the residential premises intentionally or recklessly caused by the person,

(b)   the person has failed to pay an amount of money to the landlord in accordance with an order of the Tribunal,

(c)   the Tribunal has, on application by the landlord, terminated the residential tenancy agreement by order under section 64 of the *Residential Tenancies Act 1987* on the grounds referred to in subsection (2) (a) (ii) or (b) of that section,

(d)   the Tribunal has made an order terminating the residential tenancy agreement under section 68 of the *Residential Tenancies Act 1987*.

(3)   If the Rental Bond Board is holding a rental bond in relation to the residential tenancy agreement concerned, a person must not be listed for the reason referred to in subclause (2) (a) unless the amount owing to the landlord is more than the amount of the rental bond.

(4)   A person must not be listed on a tenant database for the reason referred to in subclause (2) (a) (ii) unless:

(a)   the landlord has completed a condition report in accordance with clause 8 of the *Residential Tenancies (Residential Premises) Regulation 1995*, and

(b)   the damage has been noted in that condition report, and

(c)   the agent has reported the damage to the police and has been given an incident number in relation to that report, and

(d)   if the person has made an application to the Tribunal under section 16 of the *Residential Tenancies Act 1987* for an order in relation to the tenancy—the Tribunal has determined the application.

(5)   Subclause (1) (d) and (e) do not apply if the agent cannot locate the person concerned after making reasonable enquiries.

(6)   An agent must record the details of the matters referred to in subclause (1) (d) and (e), or of the agent's attempts to locate the person concerned, and keep the record for at least 5 years.

5   Requirement for agent to notify database operator when debt paid

An agent must, within 7 days of becoming aware that any debt specified on a tenant database in relation to a listed person has been paid, notify the database operator that the debt has been paid.

6   Other requirements in relation to tenant databases

An agent must not use the services of a database operator for the purposes of listing any person on a tenant database unless the database is operated in accordance with the following requirements:

(a)   any person who is listed on the database must be given free access to the personal information entered on the database in relation to the person,

(b)   if the listed person claims that the personal information is inaccurate, out of date or incomplete:

(i)   the information must be amended, without charge, in accordance with the person's claim (unless the claim is disputed by the agent), or

(ii)   if the claim is disputed by the agent—any objection by the person in relation to the information must be noted on the database,

(c)   if a listed person pays any debt specified on the database in relation to the person within 3 months of the

date on which the debt was incurred, the personal
information relating to the person must, within 7 days
of the database operator being notified by the agent that
the debt has been paid:

(i)   be amended to delete any reference to the debt,
      and

(ii) be deleted entirely from the database (unless the
      person has also been listed for a reason other than
      for non-payment of the debt),

(d) if a listed person pays any debt specified on the
     database in relation to the person after the period of 3
     months following the date on which the debt was
     incurred, the personal information relating to the person
     must:

(i)   within 7 days of the database operator being
      notified by the agent that the debt has been
      paid—be amended to indicate that the debt has
      been paid, and

(ii) on the third anniversary of the date of the listing:

(A) be amended to delete any reference to the
     debt, and

(B) be deleted entirely from the database
     (unless the person has also been listed for a
     reason other than for non-payment of the
     debt),

(e) if a person has been listed on the database for a reason
     other than for non-payment of a debt, the personal
     information relating to the listed person must, on the
     third anniversary of the date of the listing:

(i)   be amended to delete any reference to the reason
      for the listing, and

(ii) be deleted entirely from the database (unless the
      person has also been listed for any one of the
      reasons referred to in clause 4 (2) for less than 3
      years).