



New South Wales

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

under the

Property, Stock and Business Agents Act 2002

*[The following enacting formula will be included if this Regulation is made:]*

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*.

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 real estate agents for the sale of residential properties:
  - (i) to make certain records of any report of which they are aware in respect of a property inspection or an inspection of owners corporation records, and
  - (ii) to disclose those records (if any) to any person requesting a copy of the contract for the sale of the property, and
- (b) to exempt real estate agents 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 agency agreements for the sale of residential properties to specify the price at which the property is to be offered.

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

under the

Property, Stock and Business Agents Act 2002

### **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 1 July 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) an 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 of any report in accordance with subclause (4) of which the licensee is aware in respect of:
  - (a) a physical inspection of the property, or
  - (b) an inspection of documents relating to the property under section 108 of the *Strata Schemes Management Act 1996*.

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) However, a licensee is not required to make a record of any particulars referred to in subclause (4) that are not known to or cannot be reasonably obtained by the licensee.

- (4) 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,

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- (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.
- (5) A licensee is not liable for anything done or omitted to be done in good faith:
  - (a) in the exercise of a function under this clause, or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this clause.
- (6) In this clause, *function* includes a duty and *exercise* a function includes perform a duty.

**[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:

- (a) managing any property on behalf of an affiliate of the agent, or
- (b) undertaking commercial property agency work in respect of any property that has:
  - (i) a market value of \$40 million or more, or
  - (ii) a total 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.