



New South Wales

Property and Stock Agents Amendment Regulation 2019

under the

Property and Stock Agents Act 2002

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

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

Minister for Better Regulation and Innovation

Explanatory note

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

- (a) to prescribe certain functions of real estate agents, stock and station agents or strata managing agents that may only be exercised by holders of certain licences,
- (b) to exempt agents who perform on-site residential property manager functions from the operation of the Act if those functions relate to a residential premises with no more than 20 lots,
- (c) to prescribe the material facts an agent must disclose when inducing a person to enter into any contract or arrangement,
- (d) to provide rules of conduct that must be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration,
- (e) to make amendments of a savings and transitional nature,
- (f) to make minor amendments consequent on the commencement of the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*.

This Regulation is made under the *Property and Stock Agents Act 2002*, including sections 3A, 4(1), 10A, 37, 52(1)(b) and 230 (the general regulation-making power) and clause 1 of Schedule 1.

Property and Stock Agents Amendment Regulation 2019 [NSW]

Property and Stock Agents Amendment Regulation 2019

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Property and Stock Agents Act 2002

1 Name of Regulation

This Regulation is the *Property and Stock Agents Amendment Regulation 2019*.

2 Commencement

This Regulation commences on 23 March 2020 and is required to be published on the NSW legislation website.

Drafting note 2.1 *The Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018 is proposed to commence on 23 March 2020.*

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

[1] Clause 1 Name of Regulation

Omit “*Property, Stock and Business*”. Insert instead “*Property and Stock*”.

[2] Clause 3 Definitions

Omit “*Property, Stock and Business*” from the definition of *the Act* in clause 3(1).

Insert instead “*Property and Stock*”.

[3] Clause 3(1)

Insert in alphabetical order—

residential tenancy agreement has the same meaning as in the *Residential Tenancies Act 2010*.

[4] Clauses 4–4C

Omit clause 4. Insert instead—

4 Extended functions of real estate agents and assistant real estate agents

For the purposes of the definition of *real estate agent functions* in section 3A(1) of the Act, real estate agent functions include acting as an auctioneer or agent in respect of any parcel of rural land but only if the parcel of rural land has an area of up to 20 hectares.

4A Functions that real estate agents and assistant real estate agents may exercise

- (1) A real estate agent who holds a class 1 licence may exercise all real estate agent functions.
- (2) A real estate agent who holds a class 2 licence may exercise all real estate agent functions, but may not authorise the withdrawal of money from a trust account.
- (3) An assistant real estate agent may exercise the functions described in paragraphs (c), (d) and (e) of the definition of *real estate sale or leasing functions* in section 3A(2) of the Act, but may not—
 - (a) enter into any contract or transaction on behalf of any party, except a residential tenancy agreement, or
 - (b) authorise the withdrawal of money from a trust account.

4B Functions that stock and station agents and assistant stock and station agents may exercise

- (1) A stock and station agent who holds a class 1 licence may exercise all stock and station agent functions.
- (2) A stock and station agent who holds a class 2 licence may exercise all stock and station agent functions, but may not authorise the withdrawal of money from a trust account.
- (3) An assistant stock and station agent may exercise all stock and station agent functions, but may not—
 - (a) perform any function described in paragraph (b) of the definition of *real estate sale or leasing functions* in section 3A(2) of the Act, or

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- (b) enter into any contract or transaction on behalf of any party, except residential tenancy agreements or livestock transactions, or
 - (c) authorise the withdrawal of money from a trust account.
- (4) In this clause—
stock and station agent functions means the functions referred to in the definition of *stock and station agent* in section 3(1) of the Act.

4C Functions that strata managing agents and assistant strata managing agents may exercise

- (1) A strata managing agent who holds a class 1 licence may exercise all strata managing agent functions.
- (2) A strata managing agent who holds a class 2 licence may exercise all strata managing agent functions, but may not authorise the withdrawal of money from a trust account.
- (3) An assistant strata managing agent may exercise all strata managing agent functions, but may not—
 - (a) enter into any contract or transaction on behalf of any party, or
 - (b) authorise the withdrawal of money from a trust account, or
 - (c) affix the seal of the owners corporation.
- (4) In this clause—
strata managing agent functions means the functions referred to in the definition of *strata managing agent* in section 3B of the Act.

[5] Clause 7 Rules of conduct

Omit clause 7(1). Insert instead—

- (1) The rules set out in Schedules 1–3 and 6 are prescribed for the purposes of section 37 of the Act as rules of conduct to be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration, with those Schedules applying as follows—
 - (a) Schedule 1 applies to all agents and assistant agents (in addition to any other Schedule or Schedules that may be applicable to the particular agent or assistant agent),
 - (b) Part 1 of Schedule 2 applies to real estate agents and assistant real estate agents when performing real estate sales or leasing functions in relation to the sale of land or business agent functions,
 - (c) Part 2 of Schedule 2 applies to real estate agents and assistant real estate agents when performing real estate sale or leasing functions in relation to the lease of land or on-site residential property manager functions,
 - (d) Schedule 3 applies to stock and station agents and assistant stock and station agents,
 - (e) Schedule 6 applies to strata managing agents and assistant strata managing agents.

[6] Clauses 8(1)(h), 23(9), 37(8) (definition of “managing agent”) and 38, clause 6 of Schedule 6, clause 8(2) of Schedule 7 and clause 1 of Schedule 14

Omit “or community managing agent” wherever occurring.

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[7] Clause 16 Notification of auction conditions

Omit “, or a stock and station salesperson” from clause 16(2).

Insert instead “, or an assistant stock and station agent”.

[8] Clause 16(2)

Omit “or salesperson”. Insert instead “or assistant stock and station agent”.

[9] Clause 17 Warnings about bidders’ obligations

Omit “*Property, Stock and Business Agents Act 2002*” wherever occurring in clause 17(1) and (3).

Insert instead “*Property and Stock Agents Act 2002*”.

[10] Clause 21 Additional requirements for strata managing agents

Omit “or community managing agent” wherever occurring in clause 21(1) and (2).

[11] Clauses 46B and 46C

Insert after clause 46A—

46B Exemption for on-site residential property managers

For the purposes of section 4(1) of the Act, an agent who performs on-site residential property manager functions is exempt from the operation of the Act when performing those functions, but only if those functions relate to a residential premises with no more than 20 lots.

46C Exemption from qualification requirements for certain agents

(1) An agent is exempt, when applying for a class 2 licence, from obtaining the qualifications required for the issue of the licence if the person held—

(a) an equivalent licence under the Act for a period of 2 or more years before the commencement of the amending Act, and

(b) the equivalent licence did not expire more than 5 years before the commencement of the amending Act.

(2) In this clause—

amending Act means the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*.

equivalent licence means a licence that, in the opinion of the Secretary, is equivalent to the licence to which the application relates.

[12] Clause 54

Insert after clause 53—

54 Misrepresentation by licensee or registered person by failing to disclose material facts

The following kinds of material facts are prescribed for the purposes of section 52(1)(b) of the Act—

(a) that the property was subject to flooding from a natural weather event or bush fire within the last 5 years,

(b) that the property was the scene of a serious indictable offence within the last 5 years,

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Note. Serious indictable offence is defined in the *Interpretation Act 1987* to mean an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

- (c) that the property was the scene of an offence under the *Drug Misuse and Trafficking Act 1985* within the last 2 years,
- (d) that a person has committed suicide in the property within the last 5 years,
- (e) that the property poses a significant health or safety risk,
- (f) that the property is listed on the loose-fill asbestos insulation register, as required to be maintained under section 119B of the *Home Building Act 1989*,
- (g) that the property is, or is part of, a building that is on the register of buildings that have external combustible cladding established under clause 186U of the *Environmental Planning and Assessment Regulation 2000*.

[13] Schedule 1 General rules of conduct applying to all licensees and registered persons

Insert at the end of the Schedule—

20 Fees and charges

An agent must clearly explain to a client the fees and charges payable under the terms of an agency agreement and ensure the client or customer is promptly made aware of any change to the fees and charges.

21 Agent to pay rental income monthly to landlord

An agent must pay rental money for each calendar month (less any authorised expenses) owing to a landlord under a tenancy agreement at the end of each calendar month, unless instructed otherwise by the landlord.

22 Licensees and certificate holders not to receive certain gifts or benefits over a certain amount

The amount prescribed for the purposes of section 53F(2)(d) of the Act is \$60.

[14] Schedule 2, heading

Omit the heading. Insert instead—

Schedule 2 Rules specific to real estate agents and assistant real estate agents

[15] Schedule 2, Part 1, heading

Omit the heading. Insert instead—

Part 1 Real estate and business sales

[16] Schedule 2, clause 1A

Insert before clause 1—

1A Application of Part

This Part applies to real estate agents and assistant real estate agents who perform real estate sales or leasing functions in relation to the sale or purchase of land and business agent functions.

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[17] Schedule 2, clauses 1–9

Insert “or business” after “property” wherever occurring.

[18] Schedule 2, clause 1

Omit “person on the sale”. Insert instead “vendor”.

[19] Schedule 2, clause 2(a) and (k)

Omit “person on behalf of whom the agent is acting” wherever occurring.

Insert instead “vendor”.

[20] Schedule 2, clause 2(d)

Insert “including the business name and its Australian Business Number where relevant,” after “identified,”.

[21] Schedule 2, clause 2(e)

Insert “, and, for business sales, a description of inclusions to be included in the sale such as goodwill, plant, fittings and stock in inventory, together with details of any encumbrances affecting those inclusions,” after “property,”.

[22] Schedule 2, clauses 9A–9F

Insert after clause 9—

9A Statement of property details

At the time of entering into an agency agreement with a person on behalf of whom an agent is to act as buyer’s agent, the agent must prepare and give the person a statement of property details that is signed by the agent and specifies the following—

- (a) details known to the agent of the type of property to be purchased,
- (b) details of any special instructions about the property to be purchased (for example, an instruction that vacant possession is required in the case of a rented property).

Note. These details can be changed by agreement between the parties or as provided by the agency agreement.

9B Person on behalf of whom agent is acting as buyer’s agent to be informed of negotiations

- (1) An agent acting as a buyer’s agent for a person must keep the person informed of each stage of the negotiation of a purchase price as instructed by the person.
- (2) This clause does not apply to bids made in the course of an auction.

9C Buyer’s agent to obtain best possible purchase price

An agent acting as a buyer’s agent must use the agent’s best efforts to obtain the best possible purchase price, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.

9D Buyer’s agent not to exceed maximum purchase price fixed by client in negotiations or at auction

- (1) In negotiations for the purchase of a property, an agent acting as a buyer’s agent for a person (the *client*) must not exceed the maximum price fixed by the client without the express written authorisation of the client or a person authorised by the client.

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- (2) When the bidding at an auction exceeds the maximum price fixed by the client, the agent must not continue bidding without the express authorisation of the client or a person authorised by the client.

9E Information to be given when expression of interest deposit paid

- (1) An agent acting as a buyer's agent for a person must inform the person of the following if the person pays an expression of interest deposit in respect of the proposed purchase of a property prior to the exchange of contracts—
- (a) that the vendor has no obligation to sell the property,
 - (b) that the person has no obligation to buy the property,
 - (c) that the deposit is refundable if a contract for the sale of the property is not entered into.
- (2) The information must be provided in writing and may be provided on the receipt issued by the vendor or the vendor's agent.
- (3) An agent acting as a buyer's agent for a person must promptly inform the person if the agent becomes aware of any subsequent offers to purchase the property on which the expression of interest deposit has been paid.

9F Agent must not accept payment for a referral

An agent acting as a buyer's agent for a person must not demand or accept a fee or other valuable consideration for referring the person to a selling agent.

[23] Schedule 2, clause 10A

Insert before clause 10—

10A Application of Part

This Part applies to real estate agents and assistant real estate agents who perform real estate sale or leasing functions in relation to the lease of land or on-site residential property manager functions.

[24] Schedule 2, clause 12

Omit "A licensee". Insert instead "An agent".

[25] Schedule 2, clause 13(1A)–(1C)

Insert after clause 13(1)—

- (1A) In attending to an owner's instructions for maintenance or repairs, an agent must take all reasonable steps to obtain quotes from 3 different providers specifying the estimated cost for any work required to maintain or repair the property.
- (1B) Despite subclause (1A), an agent does not need to obtain quotes from 3 different providers if—
- (a) the owner instructs that it is not required, or
 - (b) the work required is urgent, or
 - (c) it is not reasonable or feasible for the agent to obtain 3 different quotes, or
 - (d) the estimated cost of the work required is less than \$2,000.
- (1C) The agent is to notify the owner in writing of the reasons as to why obtaining 3 different quotes was not reasonable or feasible under subclause (1B)(c).

[26] Schedule 2, clauses 18 and 19

Insert after clause 17—

18 Confirmation of specific instructions—property management services

Before or at the time of entering into an agency agreement under which an agent will provide property management services in respect of the leasing of residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the management of the property or rural land and any limitations on the agent's authority to undertake those duties—

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a tenancy agreement (specifying the term for which the property may be let),
- (c) undertaking inspections of the property,
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the owner,
- (e) paying disbursements and expenses incurred in connection with the agent's management of the property,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices for breach of the tenancy agreement or to terminate the tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the owner in relation to the tenancy of the property,
- (j) representing the owner in any tribunal or court proceedings in respect of the tenancy of the property,
- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, insurance premiums, maintenance expenses and owners corporation levies),
- (l) advertising the property for letting or re-letting,
- (m) reviewing the rent at the end of a tenancy.

19 Confirmation of specific instructions—leasing of property

Before or at the time of entering into an agency agreement under which an agent will act for the owner of a residential property or rural land in relation to the entering into of a lease of the residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the entering into of the lease of the property or rural land and any limitations on the agent's authority to undertake those duties—

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a tenancy agreement,
- (c) undertaking an initial inspection of the property,
- (d) collecting the initial rent payment,

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- (e) receiving and disbursing rental bond money,
- (f) advertising the property for letting.

[27] Schedule 3

Omit the heading. Insert instead—

Schedule 3 Rules specific to stock and station agents and assistant stock and station agents

[28] Schedule 3, clause 7A

Insert after clause 7—

7A Theft of livestock

An agent who suspects, at an auction for the sale of livestock, or at any other time, that livestock may have been stolen or otherwise unlawfully obtained, must, as soon as reasonably practicable, inform a police officer of the cause of that suspicion.

[29] Schedule 3, clause 11(1A) and (1B)

Insert after clause 11(1)—

- (1A) In attending to an owner's instructions for maintenance or repairs, an agent must take all reasonable steps to obtain quotes from 3 different providers specifying the estimated cost for any work required to maintain or repair the property.
- (1B) Despite subclause (1A), an agent does not need to obtain quotes from 3 different providers if—
 - (a) the owner instructs that it is not required, or
 - (b) the work required is urgent, or
 - (c) it is not reasonable or feasible for the agent to obtain 3 different quotes, or
 - (d) the estimated cost of the work required is less than \$2,000.
- (1C) The agent is to notify the owner in writing of the reasons as to why obtaining 3 different quotes was not reasonable or feasible under subclause (1B)(c).

[30] Schedules 4 and 5

Omit the Schedules.

[31] Schedule 6

Omit the heading. Insert instead—

Schedule 6 Rules specific to strata managing agents and assistant strata managing agents

[32] Schedule 6

Omit clauses 2–5.

[33] Schedule 6, clause 6(h)

Omit “sinking fund”. Insert instead “capital works fund”.

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[34] Schedule 14

Omit “sinking fund” from clause 1(h). Insert instead “capital works fund”.