

## DIY – Introductory Compliance Checklist for NSW

### **WARNING**

*Kaplan Education Pty Ltd do not make any warranty of any kind, whatsoever express or implied, with respect to the contents of this DIY – Introductory Compliance Checklist. Kaplan Education Pty Ltd will not be liable to anyone with respect to any damages, loss or claim whatsoever, no matter how occasioned, in connection with the use of the contents of this checklist. While Kaplan Education Pty Ltd believes the content of the checklist to be accurate and current, there may be inaccuracies. It is the responsibility of the real estate firm using the checklist to verify any information before relying on it.*

The following 'Do It Yourself' introductory compliance checklist is designed to assist you to cover the basic compliance needs of the average real estate business in NSW.

It does focus on the Property Stock & Business Agents Act 2002 and Regulation 2003, plus the compulsory 'Guidelines issued by the Commissioner for Fair Trading as to what constitutes Proper Supervision of the Business of a Licensee' as well as other related legislation.

Realistically, while this tool will not make you as secure as having a Kaplan on-site Compliance Check undertaken by a specialist, it will help you get many of the important issues sorted out – especially on the sales side of your business.

The Office of Fair Trading (OFT), through their compliance enforcement officers regularly audit real estate businesses throughout NSW. While they are after dishonest, unethical operators, sometimes they capture the honest agents who make the odd mistake.

The checklist starts at the front door of your business, then moves into licensing and certificates of registration requirements. As you will see, many of the items on the checklist cover the filling-out process of agency agreements – sales in particular - but compliance issues do relate to all agency agreements (mistakes can deem an agency agreement as invalid, and can lead to forfeiting commissions).

Take your time and be honest with your self-assessment – however, then you or someone else, address any mistakes this checklist highlights.

	LICENCE DETAILS	Y	N
S29 (1)&(2)	<p><b>Display of name at registered office</b></p> <p>Are your details correct and displayed legibly and conspicuously outside your registered office:</p> <ul style="list-style-type: none"> <li>the licensee's name (either corporation, partnership or sole trader) and</li> <li>trading as, and</li> <li>if a corporation, the name of the person-in-charge of the corporation's registered office, and</li> <li>classes of licences held by the Licensee-in-Charge.</li> </ul>		
S8	<p><b>Agents required to be licenced or certificate of registration holder</b></p> <p>By accessing the NSW Office of Fair Trading 'Property Services Licence Check' <a href="http://www.fairtrading.nsw.gov.au/realestaterenting/licencecheck">www.fairtrading.nsw.gov.au/realestaterenting/licencecheck</a> compare details of all your licensed personnel and certificate of registration-holders with what is recorded.</p> <p>[to be shown upon demand but recommend display]</p> <ul style="list-style-type: none"> <li>are you employing a person who is not listed</li> <li>do you have someone listed that is no longer employed by you</li> <li>are dates of currency of licences and certificates of registration correct</li> </ul>		
S9	<p><b>Corporation licence</b></p> <ul style="list-style-type: none"> <li>to be shown on demand but display recommended.</li> <li>can a copy of your current corporation licence be shown upon demand</li> </ul> <p><b>Continuing Profession Development (PS&amp;BA Act S8 &amp; S10)</b></p> <ul style="list-style-type: none"> <li>do you have a register of licence and certificate holders as to CPD undertaken</li> <li>are dates of renewal and dates of CPD training undertaken recorded</li> <li>do all your applicable staff understand CPD training changes as per Commissioners Guidelines amended Sept 2006, April 2007 plus changes introduced from January 1st 2008</li> </ul>		
S42	<p><b>Register of employees - Licensee to keep records of certain employees</b></p> <ul style="list-style-type: none"> <li>do you maintain and retain an employment register for 3 years from when any person ceases to be employed.</li> </ul> <p>A licensee must make and keep a record of the name and residential address of each employee that the licensee employs as a real estate salesperson, stock and station salesperson, business salesperson or registered manager.</p> <p>The licensee must keep the record for at least 3 years after the person ceases to be an employee.</p> <p>The licensee must keep the record in the form of a register of employees and that register must be kept at the place of business of the licensee at which the employee is employed or at such other place as the Director-General may approve.</p>		

	SUPERVISION - S32 PS&BA Act 2002	Y	N
S32	<p><b>Supervision &amp; control over staff - (as per OFT Supervision Guidelines)</b></p> <ul style="list-style-type: none"> <li>• do you, as the licensee-in-charge, have compulsory documented procedures, in the form of policy and procedures information plus checklists with a system of review that cover what the Commissioner for Fair Trading has outlined in the OFT Supervision Guidelines</li> <li>• could you produce such a documentation to an authorised officer of the OFT, and be able to demonstrate that the procedures are regularly used, monitored and maintained for the following: <ul style="list-style-type: none"> <li>- do you, as licensee-in-charge, properly train and supervise staff?</li> <li>- if you, as licensee-in-charge, are not the person who is appointed to this role, is there a person in charge of this supervisor role?</li> </ul> </li> </ul> <p><b>Supervision Guidelines (SG) 1 through to 6</b></p> <p><b>SG1</b></p> <ul style="list-style-type: none"> <li>• do you, as licensee, have written procedures instructing employees as to their duties for daily or next day banking practices of trust money</li> </ul> <p><b>SG2</b></p> <ul style="list-style-type: none"> <li>• do you, as licensee, have written procedures outlining how you conduct a review of trust account cash flow on a monthly basis</li> </ul> <p><b>SG3</b></p> <ul style="list-style-type: none"> <li>• do you, as licensee, have written procedures that set out the steps that all relevant staff must take to substantiate any selling price estimates that are provided to a seller or prospective buyer</li> <li>• is a checklist being used to ensure the requirements are being met (note: using a checklist for this function is not mandatory but recommended)</li> </ul> <p><b>SG4</b></p> <ul style="list-style-type: none"> <li>• do you, as licensee, maintain and are you able to demonstrate that your listing agents use a checklist in the property sales process that demonstrates advertising material accurately describes the property concerned, and complies with PS&amp;BA Act S51 and agency agreement</li> <li>• as per the Commissioners for Fair Trading Advertising Guidelines, is there any marketing / advertising material that could be deemed 'false and misleading' to the consumer in: <ul style="list-style-type: none"> <li>- the front window</li> <li>- flyers / brochures</li> <li>- on the company website</li> <li>- what is verbally conveyed by your agents and employees to a consumer or client</li> </ul> </li> <li>• are all marketing photographs clear and true – not false and misleading</li> <li>• are photos of views actually taken from the property</li> <li>• is 'location shot' printed on photographs where necessary</li> <li>• is 'close to beach or shops' or 'within walking distance' or 'a short stroll' used extensively (could be deemed false and misleading to the consumer)</li> </ul>		

	<ul style="list-style-type: none"> <li>• are all proper disclosures of conflicts of interest made to clients and prospective buyers (PS&amp;BA Act S47)</li> <li>• are restrictions on your agents obtaining a beneficial interest in property in place (PS&amp;BA Act S49)</li> <li>• do you have a warning notice if you provide financial and investment advice to clients and prospective buyers (PS&amp;BA Act S46)</li> <li>• do you have a policy in place for 'licensee interest in property' (PS&amp;BA Act S50)</li> </ul> <p>note: using a checklist is mandatory for the above SG4 functions. The completed checklist must be certified in writing by the agent representing the vendor and retained in the sales file.</p> <ul style="list-style-type: none"> <li>• therefore, do you have such checklists in place which are used and retained in your sales files</li> </ul> <p><b>SG5</b></p> <ul style="list-style-type: none"> <li>• do you, as licensee, maintain documented complaint-handling procedures</li> <li>• do you, as licensee, maintain a separate record of the handling of financial complaints</li> <li>• are you, as licensee-in-charge, or manager, responsible for complaints of financial nature</li> </ul> <p><b>SG6</b></p> <ul style="list-style-type: none"> <li>• for all checklists / review systems for the above requirements – could you, as licensee-in-charge, produce such documentation , to an authorised officer of the Office of Fair Trading, plus demonstrate regular use and maintenance of the required documentation within the agency</li> </ul>		
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

	SALES PROCEDURES	Y	N
	<ul style="list-style-type: none"> <li>• do all sales staff know there must be a valid agency agreement, or commissions cannot be legally collected</li> <li>• is the correct licensee name in agency agreement (entity - corporation, partnership or sole-trader)</li> <li>• is the correct licence number in agency agreement (entity - corporation, partnership or sole-trader)</li> <li>• is the estimated selling price procedure followed</li> <li>• are rebates, discounts, and commissions disclosed (S57) in the agency agreement</li> <li>• if cooling off is waived, is there a separate 'waiver of cooling off S59' form correctly filled out and signed using only the prescribed OFT form</li> <li>• are any alterations to agency agreements acknowledged correctly</li> <li>• is there proof of notification the agency agreement was served within 48 hours</li> <li>• has the consumer guide been handed to vendor</li> <li>• are all estimated selling price supporting documents kept for substantiation</li> <li>• is the advertising checklist / not false and misleading completed and on-file</li> <li>• are conflicts of interest disclosed using the prescribed S47 and S49 OFT forms</li> <li>• is a completed contract in-hand prior to commencement of marketing of the listed property</li> <li>• are all the compulsory documents that are required included in the contract for sale</li> <li>• are all offers presented to the agent (whether verbally or in writing) notified to the vendor and confirmed in writing</li> <li>• are all conjunction agreement in writing</li> </ul> <p><b>Exchange of Property</b></p> <p>For all staff who are involved in the exchange of property – do they know:</p> <ul style="list-style-type: none"> <li>• they must have written authority to exchange</li> <li>• they can only insert information into 'the box' area of the contract</li> <li>• they cannot make any alterations to the contract without authorisation</li> <li>• they must make sure that contracts for vendor and purchaser are identical</li> <li>• they must deliver contracts to respective solicitors / conveyancers within 48 hours</li> <li>• they must not alter the deposit amount if less than 10% deposit is paid by the purchaser</li> </ul>		

	<b>RISK MANAGEMENT</b>	<b>Y</b>	<b>N</b>
	<p><b>Policy and Procedures</b></p> <ul style="list-style-type: none"> <li>• does your agency have a Policy &amp; Procedure Manual containing up-to-date OH&amp;S policies and procedures such as: <ul style="list-style-type: none"> <li>- procedures in place for armed hold up, fire etc</li> <li>- procedures for sexual harassment</li> <li>- procedures for anti-discrimination</li> <li>- procedures for out-of-office safety for tracking of staff</li> <li>- are fire extinguishers available and clearly marked</li> <li>- are exits + exit signs clearly placed</li> <li>- is there a commercial-sized first-aid kit in the office</li> </ul> </li> <li>• does your agency have a copy of the PS&amp;BA Act 2002</li> <li>• does your agency have a copy of the PS&amp;BA Regulations 2003 [up-to-date electronic copies are available at OFT website]</li> <li>• do all your staff know and understand the policies and procedures</li> <li>• have all your staff signed off on this</li> </ul> <p><b>Privacy Policy</b></p> <ul style="list-style-type: none"> <li>• does your agency have a privacy policy / statement drafted for use: <ul style="list-style-type: none"> <li>- where information is collected at open inspections</li> <li>- where information is collected at tenancy application</li> <li>- is it used by all relevant staff</li> <li>- is it securely stowed</li> </ul> </li> </ul> <p><b>Disclaimers</b></p> <ul style="list-style-type: none"> <li>• does your agency have legally drafted disclaimers in use</li> <li>• are your staff trained to identify areas where disclaimers must be used</li> </ul> <p><b>Disclosure</b></p> <ul style="list-style-type: none"> <li>• do your staff understand the need for disclosure documents <ul style="list-style-type: none"> <li>- S46 where financial or investment advice is given</li> <li>- S47 where disclosing a relationship the agent has with a third party when referring the client / prospective purchaser</li> <li>- S49 where obtaining a beneficial interest</li> </ul> </li> </ul> <p><b>Keeping of Records</b></p> <ul style="list-style-type: none"> <li>• do you have a system for the keeping of records, including storage (PS&amp;BA Act S103-105)</li> </ul>		

