

## DIY – Introductory Compliance Checklist for QLD

### **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 cover the basic needs of the average real estate business in QLD. In QLD, the real estate agency industry is regulated by the Property Agents & Motor Dealers Act, its Regulations and Code of Conduct.

- The Property Agents & Motor Dealers Act 2000 (PAMD Act) has been reviewed.
- Amendments to the Act were passed by Parliament March 2006.
- The amendments further strengthen consumer protections, promote industry performance and ensure fairer outcomes for consumers and traders, which impact on day to day operations of real estate agency practice
- The changes affect real estate agents – residential and commercial, property developers, auctioneers, property marketers, pastoral houses and residential letting agents
- All licensed real estate agents and registered staff must abide by the PAMD Act Code of Conduct
- All principal licensees must take steps to ensure all registered employees:
  - comply with the PAMD Act and Code of Conduct
  - do not falsely represent that the employee is the holder of a licence in relation to real estate agency
  - falsely use a title that suggests that the employee is the holder of a licence
  - does not represent that the employee is the person in effective control of the business
  - or use a title to suggest that the employee is the person in effective control of the business

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 checklist starts at the front door of your business, then moves into licences and certificates of registration requirements. As you will see, many of the items on the checklist cover the sales areas – in particular, the sales agency agreements and the completion process (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, must fix the mistakes – before you get a 'tap on your door'

	LICENCE DETAILS	Y	N
S10	<p><b>Display of licence</b></p> <ul style="list-style-type: none"> <li>is a copy of the current licensee's licence displayed in a conspicuous position so as to be clearly visible when entering the registered office (eg: reception counter; eye-level on internal wall facing consumers entering premises)</li> </ul>		
S13	<p><b>Display of licensee's name at each of the principal licensee's place of business</b></p> <ul style="list-style-type: none"> <li>are details correct, displayed conspicuously and legibly when entering the place of business: (eg: reception counter; eye-level on internal wall facing consumers entering premises; letters being minimum 1.5 cms. in height) <ul style="list-style-type: none"> <li>the licensee's name followed by the word: 'licensee'</li> <li>if the licensee is not the person in charge of business, the name of the person-in-charge of the licensee's registered office</li> <li>the category of the licensee's licence</li> <li>(eg: Property Agents &amp; Motor Dealers licence (Real Estate Agent))</li> </ul> </li> <li>is the person operating the agency the holder of a real estate agents licence</li> <li>are the directors of the agency, who are working as an employee or salesperson in the agency, the holders of a real estate agents licence</li> </ul> <p><b>Salespeople must be registered or hold a real estate agents licence</b></p> <ul style="list-style-type: none"> <li>do all your current sales staff compliance with the above</li> <li>are they displayed</li> <li>are there any un-registered persons acting in the capacity of a salesperson</li> </ul> <p>[note: agents or salespersons must advise the OFT changes to employment, address and name]</p> <ul style="list-style-type: none"> <li>can your employees produce their registration certificate</li> </ul> <p><b>Employment Register'</b></p> <ul style="list-style-type: none"> <li>is there an 'Employment Register' containing details of registered and licensed employees? Does it contain: <ul style="list-style-type: none"> <li>for each employed licence-holder, the licence-holder's licence number</li> <li>the expiry date of the employed licence-holder's licence number</li> <li>for each registered employee, the registered employee's registration number</li> <li>the expiry date of the employee's registration certificate</li> <li>the date the employee started with the principal licensee</li> <li>if employee was terminated, the date of termination</li> <li>the date of the employee's Employment Authority</li> <li>a copy of the employee's Employment Authority</li> <li>the date of any change to the employee's Employment Authority</li> </ul> </li> </ul>		

	SUPERVISION - PA&MD Act 2002	Y	N
S14	<p><b>NOTE: A person is in charge of a licensee’s business only if that person personally supervises, manages or controls the conduct of the licensee’s business at the place of business</b></p> <ul style="list-style-type: none"> <li>• do you, as the real estate agent acting as the person-in-charge / principal of the agency, have a documented procedure, either in the form of policy and procedural information or checklists, so as to supervise all employees, including registered real estate salespeople, in accordance with their Employment Authority</li> <li>• could you, as the person-in-charge, produce the 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 take reasonable steps to properly train and supervise your staff and are responsible for the acts of your staff</li> <li>– if a real estate agent is employed as the licensee-in-charge, does that person take reasonable steps to properly train and supervise your staff and are responsible for the acts of your staff</li> <li>– do you, as the 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>– do you, as the licensee, have written procedures that set out the steps that demonstrates advertising material accurately describes the property concerned, complies with the authority to act</li> <li>– is there any marketing / advertising material that could be 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> </ul> </li> <li>– are all proper disclosures of conflicts of interest made to clients prospective buyers (PA&amp;MD Act S13)</li> <li>– are restrictions on agent obtaining beneficial interest in property in place (PA&amp;MD Act S144/145)</li> <li>– is there a warning notice for providing financial and investment advice made to clients and prospective buyers</li> </ul> </li> </ul>		

	SALES PROCEDURES	Y	N
	<p><b>Do all sales staff know there must be a valid agency agreement, or commissions cannot be legally collected</b></p> <ul style="list-style-type: none"> <li>• do the Appointment to Act forms comply – as per PAMD Form 22a [commissions cannot be collected by an agent who is unlicensed and/or not validly appointed in the approved form - courts can now order the repayment of any excess commissions]</li> <li>• do your agents or salespeople know they cannot advertise, or offer to a buyer, a property without a signed authority to act (PAMD Form 22a)</li> <li>• is the correct licensee name and correct license number entered in agency agreement (name and number of the entity - corporation, partnership or sole-trader)</li> <li>• are client and contact details entered + GST registered entered</li> <li>• are details entered for the property enough to actually identify the property</li> <li>• is the reserve or listed price for the property entered</li> <li>• if the client requested information regarding price at which the property is to be offered for sale, has the client acknowledged receiving the CMA or written explanation showing the market value</li> <li>• is the estimated selling price procedure followed – [agents and auctioneers are required to substantiate a property price quotation they have provided by creating a comparative market analysis which compares like sales – at least 3 properties of similar standard or condition, sold within a 5 kilometre radius within the last 6 months]</li> </ul> <p>note – if the property is to be marketed without a price, an agent cannot disclose a price to a potential buyer unless instructed to the contrary by the seller. PAMD Form 22a allows for this</p> <ul style="list-style-type: none"> <li>• are any Rebates, Discounts and Commissions disclosed correctly</li> <li>• are any alterations to agency agreements acknowledged correctly</li> <li>• has the consumer guide been handed to the seller</li> <li>• when asked to give an opinion of price to a seller, did the agent give a copy of a CMA, or a written explanation showing how the agent arrived at the market value of the property</li> <li>• did the real estate agent or salesperson, prior to signing the Authority to Act, explain to the seller, the differences between: <ul style="list-style-type: none"> <li>– an open listing</li> <li>– an exclusive agency</li> <li>– a sole agency</li> </ul> </li> <li>• plus - did the real estate agent or salesperson: <ul style="list-style-type: none"> <li>– clarify for the seller, the difference between a ‘sole’ and an ‘exclusive’ agency agreement. [note: the seller’s ‘belief’ may become a priority over the type of agency agreement signed, if challenged by the seller]</li> <li>– ask a seller to sign the authority for a sole, or exclusive listing, for more than 60 days</li> <li>– ask the seller to re-sign an authority for a sole or exclusive listing prior to 14 days before the expiry of the original 60 days</li> </ul> </li> </ul>		

	<ul style="list-style-type: none"> <li>• do your agents and salespeople know: <ul style="list-style-type: none"> <li>- that before accepting an appointment to sell property for a client, they must explain to the seller: <ul style="list-style-type: none"> <li>▪ the general issues about a sale conducted in conjunction with other agents</li> <li>▪ the firm's policy about conjunctions</li> <li>▪ the % apportionment of commission between agents</li> <li>▪ plus, if the client authorises a conjunction sale, a real estate agent must not refuse to conjunct with another agent</li> </ul> </li> <li>- they cannot refer to themselves as an 'agent' - only the holder of a real estate agents licence can do so</li> <li>- it is illegal to act for buyer and seller at the same time</li> <li>- when they receive an expression of interest or offer on the property, this must be communicated immediately to the seller to seek instructions – [note: initial offers or expressions of interest do not have to be in writing]</li> <li>- it is illegal for them not to advise the seller if a buyer cannot proceed, in the hope that they may find another buyer</li> </ul> </li> <li>• is there a need to disclose any beneficial interest - the meaning of 'beneficial interest' is extended to include examples contained in the Auctioneer &amp; Agents Act 1971 – where: <ul style="list-style-type: none"> <li>- the licensee is a corporation and the purchase of property is made for an executive officer of the corporation; and</li> <li>- the purchase of property is made for an executive officer of a corporation of which the registered employee or their associate is an executive officer</li> <li>- any disclosures must be given using the prescribed form</li> </ul> </li> <li>• are all estimated selling price supporting documents kept for substantiation</li> <li>• is the advertising for false and misleading checklist completed and on-file</li> <li>• can you demonstrate notification of service of agency agreement within 48 hours</li> <li>• is there a need to disclose to a prospective buyer, any interest or relationship whereby a fee or reward may be paid due to that interest or relationship. Such a relationship may be: <ul style="list-style-type: none"> <li>- a family relationship,</li> <li>- a business relationship, other than a casual relationship,</li> <li>- a fiduciary relationship,</li> <li>- one where 1 person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other</li> <li>- examples of such relationships include: <ul style="list-style-type: none"> <li>▪ a finance broker,</li> <li>▪ a financial advisor,</li> <li>▪ a property valuer,</li> <li>▪ a solicitor etc</li> </ul> </li> </ul> </li> </ul>		
--	---	--	--

	<p><b>Contracts</b></p> <ul style="list-style-type: none"> <li>• are 'Warning Statements' stapled or bound to Contracts in correct order. If order is not correct, the purchaser may not proceed or can terminate the Contract without penalty</li> </ul> <p>[note: if Warning Statements attached to a Contract are presented in incorrect order and the purchaser has yet to sign, an agent/salesperson may re-submit after notifying the buyer of the error]</p> <ul style="list-style-type: none"> <li>• do your staff know that parties are committed to Contract once signed by all parties and the Warning Statement has been received by the buyer</li> <li>• do your staff have the Order of presentation of Contract documents as: <ul style="list-style-type: none"> <li>- a single cover page that includes a clear statement directing the attention of the buyer (or buyer's agent) to the Warning Statement and the relevant contract</li> <li>- the Warning Statement</li> <li>- the relevant Contract</li> <li>- any other documents</li> </ul> </li> </ul> <p><b>REIA and ACCC Advertising Guidelines</b></p> <p>To assist your agents and salespeople when publishing advertisements</p> <ul style="list-style-type: none"> <li>• are all marketing photographs clear and true – not false and misleading <ul style="list-style-type: none"> <li>- are photos of views actually taken from the property</li> <li>- is 'location shot' printed on photographs where necessary</li> <li>- is labelling used in general to clarify meaning</li> <li>- is 'close to beach' or 'close to shops' or 'within walking distance' or 'a short stroll' used extensively – could be deemed false and misleading</li> </ul> </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 PAMD Act</li> <li>• does your agency have a copy of the PAMD Regulations</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> </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>- where disclosing a relationship the agent has with a third party when referring the client / prospective purchaser</li> <li>- where obtaining a beneficial interest</li> </ul> </li> </ul> <p><b>Keeping of Records</b></p> <ul style="list-style-type: none"> <li>• as the principal licensee, do you keep in a secure, orderly and accessible manner for a period of not less than 5 years, all documents that must be kept as per the PA&amp;MD Act</li> </ul>		

