

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

AGENTS AMENDMENT REGULATION 2009 (No 1)

SUBORDINATE LAW 2009-34

EXPLANATORY STATEMENT

Circulated by authority of the
ACT Attorney General
Mr Simon Corbell MLA

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Outline

The *Agents Amendment Regulation 2009 (No 1)* (the Regulation) is made under the *Agents Act 2003* ('the Act'). In particular, a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Unit Titles Amendment Act 2008 (No 2)*.

Business licences under the Agents Act provide a regulatory framework for prudential oversight of a number of business activities (including property management, property sale and rental, and auctioneers).

The *Unit Titles Amendment Act 2008 (No 2)* introduced new provisions into the Act requiring a body corporate manager to hold a business licence under the *Agents Act 2003*. Under the scheme in the Act, a person who holds a Real Estate Agent licence will be able to undertake the functions of a body corporate manager. Where a person is not presently the holder of such a licence, that person will be able to obtain a real estate agents licence to only act as an owners corporation manager ('conditional licence'). This regulation is concerned with the technical requirements for such a conditional licence.

Details of regulations

Regulation 1 – Name of regulation – is a formal regulation setting out the name of the regulation.

Regulation 2 – Commencement – provides for commencement of the regulation. The regulation commences on 1 July 2009.

Regulation 3 – Legislation Amended – provides that the regulation amend the Agents Regulation 2003.

Regulation 4 – New Section 5D – provides that:

- it is unnecessary for a person seeking a conditional licence to advertise an intended licence application (however, if a body corporate manager seeks an unconditional licence, they will be required to advertise such an intended licence application).
- a salesperson who only provides services in relation to the management of an owners corporation need not be registered under the *Agents Act 2003* (it is only intended, at this stage, to require that the business undertaking body corporate management functions is licensed under the Act, not employees)

Regulation 5 – new Section 6(4A) – provides for the qualifications for a conditional real estate agents licence to only act as an owners corporation managing agent. The qualifications prescribed are that the person has the skills, knowledge and experience

appropriate for acting as an owners corporation managing agent (it is not intended, at this stage, to provide for formal qualifications requiring course work).

Regulation 6 – new Part 8 – provides for transitional provisions which will apply to licence applications prior to 1 January 2010. These provide that a person who makes an application for a conditional licence (whether or not the application includes a police check) is deemed to have a conditional licence, until the licence application is determined. The provision is necessary because an applicant may not have received a police check at the time they are otherwise ready to make an application. This provision will enable the smooth entry of existing body corporate managers into the new licencing scheme, and avoid the risk of a pause in trading while they await determination of the licence application (which would occur after the police check is completed).

Regulation 7 – Dictionary, note 3 – notes that “licensed real estate” and “agent owners corporation managing agent” have the same meaning that they have in the *Agents Act 2003*.