

Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2020

SL 2020/257

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2020*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2021.

3. Regulations amended

These regulations amend the *Real Estate and Business Agents (General) Regulations 1979*.

4. Regulation 2 amended

- (1) In regulation 2(1) delete the definitions of:

CPD activity

CPD subject

educational activity

mandatory CPD activity

mandatory CPD subject

point value

regulated person

relevant day

- (2) In regulation 2(1) insert in alphabetical order:

approved CPD activity means an educational activity approved for a calendar year under regulation 4AC(1) or (2);

continuing professional development activity means —

- (a) the successful completion of the modules under regulation 6A(3)(a); or
- (b) in 2021 — the successful completion of the modules under regulation 6A(3)(b); or
- (c) an approved CPD activity;

CPD subject means a continuing professional development subject listed in Schedule 1A;

educational activity —

- (a) means an activity that relates to a CPD subject that is —
 - (i) delivered in person, electronically or by audio or audiovisual means; or
 - (ii) a recording;
 and
- (b) includes —
 - (i) a course of study; and
 - (ii) the successful completion of any assessment required by the activity;

mandatory CPD activity means an approved CPD activity specified by the Commissioner under regulation 4AC(4) as a mandatory CPD activity for a regulated person for a calendar year;

point value, in relation to a continuing professional development activity, means —

- (a) for an approved CPD activity — the point value approved by the Commissioner for the activity under regulation 4AC(1) or (2); or
- (b) in any other case — 7 points;

regulated person means a licensee who is an individual, or a sales representative;

5. Regulation 4A amended

Delete regulation 4A(2) and insert:

- (2) The holding fee is payable —
 - (a) on or before the day that is 60 days after the day on which a licensee ceases to hold a current triennial certificate in respect of their licence; and
 - (b) subsequently at 3-year intervals on or before the day in that year that is 30 days after the anniversary of the day on which the licensee pays the holding fee under paragraph (a).

6. Regulations 4AA to 4AC replaced

Delete regulations 4AA to 4AC and insert:

4AA. Educational requirements (Act s. 40B and 50C)

- (1) For the purposes of sections 40B and 50C of the Act, the prescribed educational requirements for a regulated person for a calendar year are that the person complete continuing professional development activities that —
 - (a) have a combined point value of at least 10 points; and
 - (b) include any mandatory CPD activities for the regulated person for the calendar year.
- (2) A regulated person is taken to have complied with subregulation (1) for a calendar year if the person is —
 - (a) a licensee to whom both of the following apply —
 - (i) the licensee's licence is granted between 1 October and 31 December of the calendar year;
 - (ii) the licensee completed a prescribed examination for the grant of the licence in the 12 months immediately before the day on which the licence is granted;
 - or
 - (b) a sales representative whose certificate of registration was granted between 1 October and 31 December of the calendar year; or
 - (c) a regulated person —
 - (i) to whom the Commissioner grants an exemption under regulation 4AB from all or part of the education requirements for the calendar year; and
 - (ii) who complies with the requirements of the exemption.
- (3) If a regulated person commences an educational activity in a calendar year before the Commissioner's approval of the activity as an approved CPD activity takes effect under regulation 4AC, the regulated person is taken not to have completed the activity for the purposes of subregulation (1).

4AB. Exemption from educational requirements

- (1) A regulated person (the *applicant*) may apply to the Commissioner for a total or partial exemption from the education requirements under regulation 4AA(1) for a calendar year.

- (2) The application for the exemption must —
 - (a) be made in the calendar year to which the application relates; and
 - (b) set out in sufficient detail —
 - (i) the exemption applied for, including whether the application is for a total or partial exemption; and
 - (ii) the basis upon which the exemption is being sought;
 - and
 - (c) otherwise be in the approved form.
- (3) The Commissioner may grant the applicant the exemption if the Commissioner considers it appropriate to do so.
- (4) Without limiting subregulation (3), the Commissioner may grant the applicant the exemption if, during the calendar year to which the application relates, the applicant —
 - (a) has a disability or is affected by illness or injury; or
 - (b) has undertaken other educational or professional activities; or
 - (c) would suffer undue hardship if required to comply with the educational requirements.
- (5) The Commissioner may grant the exemption subject to conditions.
- (6) The Commissioner must give the applicant a notice in writing setting out —
 - (a) the Commissioner's decision on the application; and
 - (b) if the decision is to grant the exemption —
 - (i) whether the exemption is a total or partial exemption; and
 - (ii) if the exemption is a partial exemption — the educational requirements the applicant must comply with; and
 - (iii) any conditions to which the exemption is subject.

4AC. Commissioner to approve continuing professional development activities

- (1) Before 1 January of a calendar year, the Commissioner must —

- (a) by written notice, approve educational activities as approved CPD activities for the year for —
 - (i) all regulated persons; or
 - (ii) particular regulated persons or classes of regulated persons;
 - and
 - (b) approve a point value for undertaking each approved CPD activity; and
 - (c) ensure that the approved CPD activities for each regulated person have a combined point value of at least 10 points.
- (2) After 1 January of a calendar year, the Commissioner —
 - (a) may, by written notice, approve an educational activity as an approved CPD activity for the year for —
 - (i) all regulated persons; or
 - (ii) particular regulated persons or classes of regulated persons;
 - and
 - (b) must approve a point value for undertaking the approved CPD activity.
- (3) The Commissioner may approve —
 - (a) an approved CPD activity for particular regulated persons or classes of regulated persons; and
 - (b) a different point value for an approved CPD activity for particular regulated persons or classes of regulated persons.
- (4) The Commissioner may specify, by written notice, an approved CPD activity as a mandatory CPD activity for a calendar year for —
 - (a) all regulated persons; or
 - (b) particular regulated persons or classes of regulated persons.
- (5) A written notice made under this regulation must —
 - (a) if the notice is made under subregulation (1) or (2) — set out the point value for undertaking each activity; and
 - (b) be published on a website maintained by the Commissioner; and
 - (c) specify the date on which the notice takes effect (which must not be a date earlier than the day on which the notice is published).

4AD. Commissioner to publish list of continuing professional development activities on website

The Commissioner must maintain a list of continuing professional development activities on a website maintained by the Commissioner, including —

- (a) the approved CPD activities for a calendar year for regulated persons; and
- (b) the CPD subject to which each approved CPD activity relates; and
- (c) any mandatory CPD activities approved for regulated persons for the calendar year; and
- (d) the point value for each continuing professional development activity for regulated persons.

7. Regulation 8 amended

In regulation 8 delete the Penalty and insert:

Penalty: a fine of \$1 000.

8. Regulation 16 inserted

After regulation 15 insert:

16. Transitional regulation for *Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2020*

- (1) In this regulation —
commencement day means the day on which the *Real Estate and Business Agents (General) Amendment Regulations (No. 2) 2020* regulation 8 comes into operation;
former regulation 4AA means regulation 4AA as in force immediately before commencement day.
- (2) An approval of a CPD activity, and a point value for the activity, for 2020 made under former regulation 4AA is taken, on and from commencement day, to be an approval made under regulation 4AC for 2020.
- (3) If the Commissioner specified a CPD activity as a mandatory CPD activity under former regulation 4AA for 2020 and the specification is in force immediately before commencement day, the mandatory CPD activity is taken, on and from commencement day, to have been specified under regulation 4AC(4) for 2020.

9. Schedule 1A amended

- (1) In the heading to Schedule 1A delete “**Professional**” and insert:

Continuing professional

- (2) Delete the reference after the heading to Schedule 1A and insert:

[r. 2]

10. Schedule 2 Form 2 amended

In Schedule 2 Form 2 delete “Department of Commerce — Consumer Protection” (each occurrence) and insert:

Department of Mines, Industry Regulation and Safety — Consumer Protection Division

11. Schedule 2 Form 3 amended

In Schedule 2 Form 3 delete “Department of Commerce — Consumer Protection” and insert:

Department of Mines, Industry Regulation and Safety — Consumer Protection Division

12. Schedule 3 amended

In Schedule 3 in the table:

- (a) delete the items for s. 35 and 37(3);
(b) before the item for s. 40(1)(a) insert:

s. 40B	Licensee failing to comply with educational requirements	\$1 000
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- (c) delete the items for s. 41(1)(a), 41(1)(b), 41(2)(a), 41(2)(b), 51(1), 70(1), 70(3), 70(8) and 86 and insert:

s. 50C	Sales representative failing to comply with educational requirements	\$1 000
s. 84(1)	Failing to cause audit of trust account under section 70(1)	\$2 000

s. 84(1)	Failing to deliver audit report to the Commissioner under section 70(3)	\$2 000
s. 84(1)	Failing to deliver a termination audit report under section 70(8)	\$600
s. 142	Failing to notify Commissioner of commencing or ceasing business under section 35	\$400
s. 142	Branch manager acting for more than one licensee or as an agent on own account under section 37(3)	\$400
s. 142	Failing to display official details at registered office under section 41(1)(a)	\$400
s. 142	Failing to display official details at branch office under section 41(1)(b)	\$400
s. 142	Failing to display official details on all correspondence and documents from registered office under section 41(2)(a)	\$400
s. 142	Failing to display official details on all correspondence and documents from branch office under section 41(2)(b)	\$400
s. 142	Failing to notify Commissioner of commencing or ceasing employment, or acting, as a sales representative under section 51(1)	\$400

(d) in the item for r. 8 delete “\$20” and insert:

\$200

N. HAGLEY, Clerk of the Executive Council.
