



**Australian
Competition &
Consumer
Commission**

Final Assessment of Certification Trade Mark (CTM) Applications 1401399 and 1401400 lodged by the Real Estate Institute of New South Wales

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above Certification Trade Mark (CTM) applications.

The ACCC's Final Assessment is that it is satisfied that:

- (a) the approved certifiers demonstrate the attributes necessary to competently certify the goods and/or services in respect of which the CTM is to be registered;
- (b) the rules governing the use of the CTM would not be to the detriment of the public; and
- (c) the rules governing the use of the CTM are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Competition and Consumer Act 2010* (the Act) (formerly the *Trade Practices Act 1974*) and the principles relating to unconscionable conduct (Part 2-2), unfair practices (Part 3-1), and safety of consumer goods and product related services (Part 3-3) in Schedule 2 (Australian Consumer Law) of the Act.

Signed.....  (Deputy Chair)

Date..... 30 July 2012

Certification
Rules


Real Estate Institute of New
South Wales-

REINSW ACCREDITED
AGENCY & device

REINSW ACCREDITED
PROPERTY SPECIALIST &
device

14 December 2010

Certified copy
pursuant to section 175(2)(b)
of the *Trade Marks Act 1995*


.....
Commissioner

30 July 2012
.....
Date

Certification Rules

1 Introduction

These are the certification rules (Rules) in relation to trade mark application nos. ~~17024358~~ ~~17024358~~ for REINSW ACCREDITED AGENCY & device and REINSW ACCREDITED PROPERTY SPECIALIST & device (the Certification Trade Marks) lodged by the Real Estate Institute of New South Wales (REINSW). REINSW is to be the certification body.

1.1 The certification body- REINSW

REINSW is the largest association of property professionals in NSW. It provides various services to members including:

- compliance review services;
- a telephone helpline service which gives advice on issues such as an agent's rights and responsibilities under various statutes, agency agreements, and tenancy and property management issues;
- training services, as a Registered Training Organisation, REINSW provides a range of licensing and ongoing training programs and courses to its members;
- keeping members informed of relevant real estate issues through a monthly journal, website and social media; and
- making submissions to government agencies and statements to the media on real estate issues on behalf of its members.

Further information in respect of REINSW is available at www.reinsw.com.au.

1.2 Certification Trade Marks

REINSW intends the Certification Trade Marks to be used to indicate to consumers which real estate professionals have satisfied REINSW's specialist accreditation program (Specialist Accreditation Program).

Individuals or agencies who have satisfied the criteria of the Specialist Accreditation Program (Accredited User) can use the Certification Trade Marks on company stationary, literature, marketing collateral and in advertising media, in a manner reflecting certification under these Rules, or as approved in writing by REINSW.

1.3 Use of the Certification Trade Marks

The Certification Trade Marks will allow consumers easily to identify real estate professionals who:

- have specialised knowledge in their field;
- carry a specified level of professional indemnity insurance¹;

¹ Where the agency as well as the agent is accredited.

- have significant practical experience; and
- are committed to ongoing quality training beyond the current NSW Fair Trading (OFT) requirements.

The Certification Trade Marks are a tool (in addition to price, personal recommendation etc) which members of the general public can use to assess a real estate professional and consider whether or not to engage their services.

1.4 Benefits to the public

A key element of the Certification Trade Marks is that the marks indicate a commitment to training beyond current OFT requirements.

The Certification Trade Marks will provide consumers with another tool to evaluate real estate professionals and will foster a system which encourages additional education/training for real estate professionals, which is of public benefit.

There is nothing to prevent other suppliers of membership services from developing their own accreditation programs and certification trade marks which they could offer to prospective or existing members. To the extent that REINSW's accreditation program encourages other suppliers of membership services to consider the range of offers and services provided to their members, this also is a public benefit.

2 Development of REINSW Specialist Accreditation Program

Real estate practitioners in NSW are subject to registration/licensing requirements administered by OFT.

To carry on business in NSW as a real estate agent, stock and station agent, business agent, strata or community managing agent or on-site residential property manager a person, or company, must hold either an appropriate Certificate of Registration or Licence under the *Property, Stock and Business Agents Act 2002 (NSW)*.

The completion of a specified training course is a pre-requisite to obtaining a Certificate of Registration or Licence. A Certificate of Registration or Licence must be renewed annually. Renewal is dependent upon completion of a minimum number of Continuing Professional Development (CPD) units each year. CPD units are earned by completing training courses which comply with the relevant guidelines issued by OFT.

REINSW is a Registered Training Organisation (RTO) with the NSW Vocational Education and Training Accreditation Board (VETAB). As an RTO, REINSW offers courses which satisfy OFT training requirements. Other RTOs also offer courses which satisfy relevant OFT training requirements. In addition, CPD units can be earned by attending courses offered by entities other than RTOs such as industry associations and real estate franchise groups.

REINSW supports minimum training and licensing requirements for real estate professionals. However, it considers that current entry level education requirements are insufficient. REINSW considers that the profession and consumers would benefit from a system which:

- encourages training beyond minimum licensing requirements; and
- identifies experience and training beyond minimum licensing requirements.

Accordingly, it is developing the Specialist Accreditation Program.

REINSW members, who meet the Specialist Accreditation Program criteria, can use the Certification Trade Marks to identify and market themselves as holding specialist accreditation from REINSW.

REINSW will undertake ongoing efforts to develop materials to educate consumers about the Specialist Accreditation Program and the requirements for accreditation and use of the Certification Trade Marks.

Applicants who satisfy the Specialist Accreditation Program criteria will pay an annual fee to be notified by REINSW for specialist accreditation and the right to use one or both of the Certification Trade Marks (as applicable). That fee will pay for the administration of the program, as well as for the marketing of the program to members of the profession and the general public.

REINSW believes that certain members of the public will consider there are benefits in working with an accredited real estate professional. This may, in turn, encourage other real estate professionals to seek accreditation.

3 The Certification Trade Marks – requirements

Any individual or agency engaged in the real estate industry can apply to REINSW for accreditation and the right to use one or both the Certification Trade Marks (as applicable).

REINSW reserves the right to:

- grant or deny accreditation to any individual or agency, in accordance with these Rules; and/or
- upon written notice, suspend or cancel any Accredited User's accreditation if that Accredited User does not comply with these Rules (or as is otherwise reasonable in the circumstances), thereby terminating the Accredited User's right to use the relevant Certification Mark(s).

3.1 Agency accreditation

The Agency Certification Trade Mark REINSW ACCREDITED AGENCY & device ~~Insert Agency Mark~~ (Agency Mark) will indicate that an agency has been accredited under REINSW's program. Criteria for agency accreditation include that at least 50% of employees who are Licence or Certificate of Registration holders must be accredited property specialists.

3.2 Property specialists

Individuals may seek accreditation and the right to use the Property Specialist Certification Trade Mark REINSW ACCREDITED PROPERTY SPECIALIST & device ~~Insert PS Mark~~ (PS Mark) in one or more of the following areas of real estate practice:

- (1) Accredited property specialist – Accommodation
- (2) Accredited property specialist – Business Broking
- (3) Accredited property specialist – Buyers' Agency
- (4) Accredited property specialist – Commercial Property
- (5) Accredited property specialist – Property Auctioneering
- (6) Accredited property specialist – Property Management

- (7) Accredited property specialist – Property Sales
- (8) Accredited property specialist – Property Valuation
- (9) Accredited property specialist – Rural Property
- (10) Accredited property specialist – Strata Management

Initial accreditation applications will be considered by reference to the criteria set out in paragraph 3.3 (**Certification Criteria**). REINSW Chapter Committees will be responsible for reviewing and determining individual applications.²

3.3 Certification Criteria

Agencies may apply for REINSW agency accreditation and the right to use the Agency Mark if at least 50% of the agency's employees are REINSW accredited property specialists bearing the right to use the PS Mark.

The criteria for individuals to obtain specialist accreditation and the right to use the PS Mark are as follows:

(a) Accredited Property Specialist - Accommodation

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

Applicant must confirm via a written undertaking that 80% of their time is devoted to this field of practice over the past three years preceding the application.

(b) Accredited Property Specialist – Business Broking

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Business Agent Licence plus three years experience; or
 - Business Salesperson Certificate of Registration plus at least five years experience.

² Chapter Committees are an advisory body of the REINSW Board. They are comprised of elected members (or members appointed by the President) who are experienced in the area to which the individual Chapter Committee relates. There are separate chapter committees in respect of the key types of real estate practices (i.e. commercial agents, property managers, auctioneers, etc).

Applicant must confirm via a written undertaking that 80% of their time was devoted to business sales within the two years preceding the application.

(c) Accredited Property Specialist – Buyers' Agency

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

Applicant must be an exclusive Buyers' Agent with a minimum of two years' experience as an exclusive Buyers' Agent.

(d) Accredited Property Specialist – Commercial Property

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

Applicant must confirm via a written communication that 80% of their time was devoted to commercial property transactions over the past three years preceding the application.

(e) Accredited Property Specialist – Property Auctioneering

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; and
 - Auctioneers Accreditation.
- Applicant must prove or confirm via a written undertaking that they have conducted a minimum of 50 real estate auctions.

- Applicant must provide a video showing them conducting two real estate auctions:
 - one where the property was sold; and
 - one where the property was passed in.

(f) Accredited Property Specialist – Property Management

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

Applicant must confirm via a written undertaking that 80% of their time has been devoted to property management within the two years preceding the application.

(g) Accredited Property Specialist – Property Sales

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

Applicant must confirm via a written undertaking that 80% of their time has been devoted to residential sales within the two years preceding the application.

(h) Accredited Property Specialist – Property Valuation

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Real Estate Licence plus three years experience; or
 - Real Estate Salesperson Certificate of Registration plus at least five years experience.

- Applicant must be a NSW-registered valuer and provide evidence of their registration.
- Applicant must have a current professional indemnity insurance policy that covers valuations.

Applicant must have conducted a minimum of 12 valuations per annum within the three years preceding the application.

(i) Accredited Property Specialist – Rural Property

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Stock and Station Licence plus three years experience; or
 - Stock and Station Salesperson Certificate of Registration plus at least five years experience.

Applicant must produce a statement detailing their experience in rural property over a minimum of three years.

(i) Accredited Property Specialist – Strata Management

Applicants must provide documentation to evidence each of the following:

- Applicant must be an individual member of REINSW.
- Applicant must be employed by an REINSW Full Firm member agency.
- Applicant must have completed their compulsory CPD requirements (and provide supporting evidence) prior to seeking specialist accreditation.
- Applicant must have:
 - Strata/Community Managing Agent Licence plus three years experience; or
 - Registered Manager Certificate of Registration plus at least five years experience.
- Applicant must show that 80% of their time has been devoted to strata management within the three years preceding the application.

3.4 Rules relating to use

The Accredited User of the Certification Trade Marks must at all times:

- comply with these Rules;
- ensure that the Certification Trade Marks are used only in respect of the activities for which the Accredited User is accredited;
- refrain from making representations that the Certification Trade Marks relate to activities beyond the scope of the Accredited User's accreditation;
- only reproduce or advertise using the Certification Trade Marks strictly in accordance with these Rules;

- refrain from making representations that are misleading or likely to mislead or breach the provisions of the Trade Practices Act;
- not attempt to assign or transfer the right to use the Certification Trade Marks without the prior written approval of REINSW
- ensure that the Certification Trade Marks are not used in such a way that may damage the reputation of REINSW;
- refrain from using the Certification Trade Marks after the Accredited User's accreditation has expired, unless such accreditation has been renewed; and
- not use any representation of the Certification Trade Marks which is different from the Certification Trade Marks as registered under the Australian Trade Marks Act 1995.

3.5 Renewal

An Accredited User of the Certification Trade Marks will need to renew his/her or its accreditation and right to use the PS Mark and/or Agency Mark each calendar year.

Renewal will require an individual to have obtained 12 Professional Development Points (PDP) during the calendar year prior to renewal.

The PDP concept has been developed by REINSW. PDPs will be obtained by taking REINSW approved courses/completing training in the area of specialist accreditation. Specialist accreditation therefore requires a commitment to training beyond minimum annual CPD requirements.

3.6 Offering of PDP courses

REINSW will offer courses which will satisfy the PDP requirements.

However, REINSW will also allow up to half of an individual's PDP requirements to be satisfied by taking approved courses with an approved RTO or an approved trainer other than REINSW. REINSW will regularly publish an up-to-date list of approved RTOs and trainers as well as the courses/training options offered by them which qualify for PDPs.

4 Obligations of REINSW

REINSW shall principally be responsible for administering the Specialist Accreditation Program, these Rules, and the rights of individuals and/or agencies to use the Certification Trade Marks, including fulfilling the following obligations:

- REINSW shall, upon request, provide prospective applicants with guidelines as to the requisite standard for compliance with the Specialist Accreditation Program.
- REINSW shall train all auditors which it may use to determine whether applicants have satisfied the Specialist Accreditation Program, and whether Accredited Users are using the Certification Trade Marks in accordance with these Rules and the requirements of the Specialist Accreditation Program.
- REINSW shall be responsible for the application for registration and maintenance of the Certification Trade Marks as registered certification trade marks under the Australian Trade Marks Act 1995.
- REINSW shall be responsible for recording and publishing a register of Accredited Users of the Certification Trade Marks.

5 Dispute resolution

Where an application is rejected, or a renewal is refused, a person may apply for a review of that decision by the Accreditation Disputes Sub-Committee of the REINSW Board (Appeals Process).

Where a dispute arises in relation to the Certification Trade Marks and/or these Rules, and the Appeals Process fails:

- a party may not commence court or arbitration proceedings in relation to the dispute (other than urgent interlocutory relief), until the following steps have been taken.
- the party given written notice outlining the dispute to the other party (**dispute notice**);
- the other party must, upon receipt of the dispute notice the parties must endeavour in good faith to resolve the dispute using alternative dispute resolution mechanisms such as mediation.
- if the parties do not resolve the dispute within seven days of receipt of the notice (or other agreed period); or agree as to:
 - the dispute resolution mechanism;
 - the timetable for the dispute resolution steps to be taken; and
 - the independent person to be appointed to facilitate mediation or other dispute resolution process,

the alternative dispute resolution process will be considered to be frustrated.

6 Relationship of parties

Nothing in these rules is to be interpreted as constituting a partnership between REINSW and any applicant or Accredited User of the Certification Trade Marks, or as creating any other Principal/Agent, Employee/Employer, or Master/Servant relationship between those parties.

7 Entire Agreement

Except to the extent that any costs or fee agreement is executed between REINSW and any applicant or Accredited User of the Certification Trade Marks, these Rules embody the entire agreement between those parties relating to the subject matter of these Rules.

These Rules are binding upon any successors and assigns of either REINSW or any applicant or Accredited User of the Certification Trade Marks.

8 Severability

If any of the provisions contained in these Rules are or become unenforceable, then REINSW may, at its own discretion, read down any of the provisions contained in these Rules as necessary and reasonable to allow the provision to validly partially operate.

If any provision cannot be read down, that provision will be void and severable, and the remaining provisions of these Rules will be unaffected.

9 **Proper law and forum**

These Rules are to be interpreted according to the laws of New South Wales, and parties hereby irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.