

REIQ JOURNAL

FOR MEMBERS OF THE REAL ESTATE INSTITUTE OF QUEENSLAND

Young Guns

THE GENERATION THAT'S IGNORING THE RULES AND CHANGING THE GAME



INSIDE THIS EDITION:

- FIVE REASONS PROPERTY STYLING IS A MUST
- NEW ATO RULES ON \$2M-PLUS PROPERTIES
- WIN FOR COMMERCIAL AGENTS IN COURT OF APPEAL

JULY 2016

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In this edition:

Feature 1: **10**
Introducing the Next Generation of Queensland real estate



Agency Advice **28**
New tax rules for properties \$2 million and above

Risk Management **40**
Buyer hits rock bottom - Court finds rocks not part of the land
A Further Win for Commercial Sales Agent in the Court of Appeal

Regular:

Industry News	3
Snap and Share	7
Training	24
Zone Focus	31
Zone Chair Profiles	35
CPD	37
Realworks Tips	39
Real Estate Jobs	45
New Accredited Agencies	46
Supplier Directory	47
Done Deal	48
Who's Who at the REIQ?	49



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To remain the State's peak real estate organisation, universally recognised for its leadership of the profession and its relevance to real estate practitioners, governments and the community.

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REIQ still a young gun!

WORDS BY ROB HONEYCOMBE, REIQ CHAIRMAN

Even though it's 98 years old I still see the REIQ as youthful and dynamic. As a membership body it is truly reflective of the real estate profession in Queensland and while some might still have a view that it's an 'old men's club', you only need to take a good look at the Institute to know this is far from the truth.

Our board, senior management and your zone and chapter chairs are a vibrant group, with far more women than we've possibly ever seen in the REIQ's history, a broad sample of skills and industry backgrounds and a wide range of ages. Twenty-something men and 60ish women and all sorts in between. A mix of views and experiences come together with a common purpose and diversity in leadership is critical to ensure sound decision-making. It ensures your Institute is relevant to all real estate professionals, serving and helping them, regardless of their stage in their career.

But more needs to be done to ensure each new recruit knows the helping hand the REIQ can offer. For many years the REIQ dropped its Individual Membership and there's still many of you unaware it's now back, and of the benefits it offers (for just \$175 a year!) The Institute might be seen as something the boss goes along to. The place to do that rego training and access the Form 6 and contracts.

Maybe there's a number of team members in your office who don't know the full REIQ story and why they should be a part of it.

I was 21 when I started in real estate. Commission-only and driving buyers around frantically like some sleep-deprived taxi driver without a meter. A genuine hard-working idiot. And when the boss told me to go along to an REIQ breakfast I wasn't sure what I could get from it. But he told me to go so I did. And here's what I've got from my membership since that day:



1. A sense that I'm part of a profession and can be proud of what I do for a living. I'm a part of something bigger. You can't call yourself a real estate professional if you're not a member of the peak body that's standing up for us every day.
2. Knowledge and skills. I'm confident I know what's happening with legislation. I have a good handle on what's changing in real estate and where to get more info and training when I need it.

3. I can pick up a phone and ask a tricky question. That one about that expired listing and the new agent showing my buyer. Or the landlord asking us to do something we're just not sure about. The REIQ takes my call and it helps.
4. I know where to find the tools I need in my career and in my business. I sleep well knowing my Realworks forms will keep me out of trouble and protect my commissions. It's important stuff.
5. I know my voice can be heard and I can help change be effected. The REIQ's the only group that can represent me with government and work to improve our legislation.

This Journal edition introduces many of the young faces in our profession. So my request to you is this: Next time there's an REIQ event on in your area please reach out to a non-member in your office and invite them along. Find the younger you. Or just the new recruits to your office, regardless of age. And introduce them to the REIQ.

The future of our profession depends on it.

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Elections can throw a spanner in the works!

WORDS BY ANTONIA MERCORELLA, REIQ CEO

At the time of writing the Brexit result had been announced and to everyone's great surprise, Britain voted to leave the European Union.

However, stories are now emerging of those who voted to leave but, it turns out, didn't really want to leave. "I didn't think my vote would count," one hapless voter said sadly. The entire Cornwall region looks like it will lose £60 million a year in EU benefits for being a region of cultural and heritage significance. And in these cash-strapped times there are no guarantees the British government will replace that lost revenue. The most Googled term in England the day after the Brexit result was "What is the EU?" and the BBC reported that the Parliament of Great Britain's website crashed because more than 100,000 people had signed (and many more were trying to) a petition demanding another Brexit referendum!

In Australia, as I write, we are in the final throes of the federal election campaign and I am confident Queenslanders will use their vote wisely and understand that every vote counts. The REIQ is very carefully apolitical because we work so closely with both sides of politics, but the federal Labor plan to abolish negative gearing provisions is a threat to our economy.

Real estate is the state's largest source of revenue through stamp duty and other fees and taxes and this income is threatened by the removal or limitation of negative gearing provisions.

SQM Research released a report in late June that said turnover will decline "sharply".

"When negative gearing was withdrawn by the Labor Government in July 1985, the impact on dwelling sales in Brisbane was significant. In the quarter following the withdrawal



in July 1985, dwelling sales decreased by 19.1 per cent and then by a further 7.5 per cent in the quarter following this (March 1986)," the report stated.

"This came after quarterly increases of 3.7 per cent for the 12 months prior to negative gearing being halted and 5.7 per cent for the 24 months prior to negative gearing being halted," the report said.

Here's hoping common sense prevails and our elected officials – no matter who is victorious – work to protect our real estate market. After such a long campaign, which forces the real estate market into a temporary hibernation, I'm sure we will all be looking forward to getting back to business.

Whatever the result of the election, one thing is clear, real estate's young guns – those high achievers who

don't let the economy stand in their way – will survive and thrive.

We are proud to showcase 11 of the state's next generation of real estate superstars in this edition of the Journal and I think you'll agree that their conviction and their commitment to the profession is inspiring. They don't let anything stand in their way – they set goals and they achieve them.

They use everything at their disposal – from social media tools, to networking events and mentors, to innovative approaches to staff recruitment, and even a crazy haircut – to help them succeed, and they keep running, full-tilt, towards the summit.

Speaking of Summit, we have announced a few of our incredible keynote speakers who will be in the room, on the stage, talking to you, at Summit 2016! Visit REIQSummit.com.au to find out more.

For the thousands who attended Summit 2015 and raved about this awesome event, we have topped it this year with even more awe-inspiring content that is all designed to help you achieve your goals in your work life and your personal life. Don't miss out, get onto our Pre-Booking list to guarantee your Early Bird Discount! Email: events@reiq.com.au and get your name on the pre-release list.

I can't wait to see you there!

Best wishes,

A handwritten signature in black ink, which appears to read "Antonia".

Antonia



I-R: Peter Burgin, Phill Broom, Matthew Condon, Justin Nickerson, and Jason Andrew.

Nickerson crowned Auctioneer of the Year – again!

The REIQ Auctioneer of the Year for 2017 is Justin Nickerson, who won the auction finals in a tight contest, narrowly defeating old foe Jason Andrew, along with contenders Matt Condon and Phill Broom.

This is back-to-back wins for Nickerson, who was crowned the 2016 Auctioneer of the Year in an incredibly tough competition at last year's Summit event. He now holds the crown of REIQ Auctioneer of the Year for a record-equalling third time, an honour he shares with Jason Andrew.

Both Nickerson and Andrew are featured later in this edition as part of our Young Guns class of 2016, so make sure you check out that feature,

beginning on page 10.

The four auctioneer finalists, Justin Nickerson, Jason Andrew, Phill Broom and Matthew Condon, along with auctioneer great Peter Burgin, will travel to Sydney on July 20 to fight for the glory of Queensland in the State of Origin Auctioneer Competition. Go Queenslander!

Last year was the inaugural competition and Queensland smashed the Blues with a convincing victory, thanks to our team of Dane Atherton, Haesley Cush, Jason Andrew and Justin Nickerson. This year, with two of the four returning, the REIQ is confident the team will retain the shield.

We are up against three of last year's REINSW State of Origin side, Gavin Croft, Jesse Davidson, Ed Riley and newcomer Josh Larsen.

Go Queenslanders!

New service opens the door for increased assets for real estate

Real estate agents often avoid properties in strata arrangements because of headaches with paperwork, however, by outsourcing the strata services agents can secure the assets and avoid the hassles.

OutSourced Strata Director Murray Cameron said dealing with strata was difficult for real estate agents due to the large volumes of administration and the bad reputation of strata managers.

“Outsourcing it to an experienced service that will manage the administration will allow real estate agents to do what they do best,” he said.

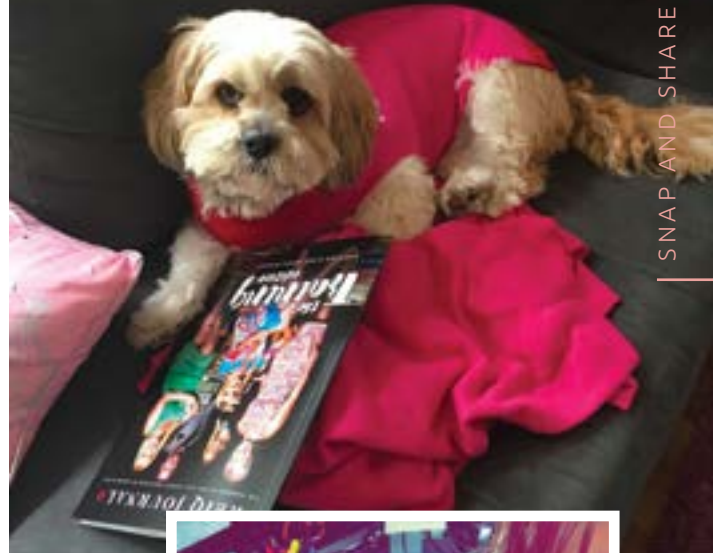
By partnering with an outsourcing specialist, such as OutSourced Strata, real estate agents will be able to drive sales and property managements to increase their revenue, cash flow and build a valuable capital asset.

“Our service allows real estate agents to not get caught up in strata compliance; we support their agency with the correct management, training and marketing tools,” Cameron said.

“We make it easy for real estate agents to operate within the strata environment. We believe this is the answer to staying relevant in this continually changing property market.”



@the_pink_team_remax
WINNER!!



SNAP AND SHARE

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Congratulations to this month's winner, @the_pink_team_remax! You've won a copy of Lee Woodward's new book, "Frameworks"!

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Five reasons property styling can boost the sale price (and commission)

While most agents today are familiar with property styling, many are reluctant to push hard with vendors as it involves asking for more money, and when you've just had the tough conversation about marketing costs, another one for styling services can be really challenging!

However, it can bring rewards at sale time and if appropriately luxurious furnishings are added it can lift a borderline property up into a new price bracket.

"It's not only about the structure for sale, it's also about the impression you want to make on prospective buyers by generating as much interest as possible - a harmoniously presented home with well organised living spaces will always have a positive impact on a property's appeal to the market," according to Picture Perfect Property Styling principal Malia Stewart.

Not convinced? Here are five more reasons why property styling can get your vendor a better price and you a bigger commission:

- 1. What is this space?** Property styling is absolutely crucial if your home has awkward or unusual configurations or nooks. Sometimes there can be a 'dead space' area in a layout, particularly around internal staircases, so getting a property stylist to come in and solve that problem before potential buyers even spot it can save time and be worth thousands.
- 2. Will it fit?** Spatial awareness is a challenge! Sometimes it can be hard to imagine what furniture can fit in certain spaces. For example, in



a second or third bedroom – will a queen size bed fit comfortably, with bedside tables? The best way to assuage those fears is to furnish the room and show that it can be done.

- 3. Colour coordination:** An issue that many potential home buyers have when trying to visualise their furniture in a particular space, is whether the wall colour will offset their couch, or will it be a colour clash that drives them up the wall. By showcasing the property in perfectly coordinated colours you can pre-empt this. "While it may seem counterintuitive, if you use a blue couch and the potential buyer has a grey couch, they are better able to see what will work in the room by understanding what already works," Stewart said.
- 4. Neutral space:** You have to make

it as easy as possible for potential buyers to imagine themselves and their lives fitting into this property. That job is much harder when the vendor's own battered couch and knick knacks are cluttering up the space. Remove all traces of the current owners so that buyers have a clean slate upon which to impose their own visions of family life.

- 5. Sell the dream:** When buyers are looking for a new home, it's usually to upgrade from their current living arrangements. While the exterior of the home and the kerb appeal is what gets them through the door, the interiors will be the biggest factor influencing their decision. Don't leave it to the bare structure of the house to do the heavy lifting of impressing potential buyers. Property styling will close the deal and bring the 'Wow!' factor to the transaction.

An all-new REIQ and Summit announcement!



The REIQ is rocketing into the modern era with a new website, a new fortnightly video update and a Summit announcement!

New website

If you haven't seen our new website visit REIQ.com (if you bookmarked our old site, the bookmark will take you straight to the new site!) and check out our shiny new online home.

One of the key features to look at is our new Find An Agent button, on the front page. This will drive consumers who are looking to appoint an agent, straight to your door! It's important that you visit this page and make sure

your details are up to date. We have capacity for agencies to upload logos and profile pictures, so jump to it and make your entry as compelling and dynamic as possible.

REIQ Wrap

As part of our fortnightly email newsletters to all members we include a two-minute video update that shares all the latest news from REIQ. Make sure when you see your email newsletter arrive in your inbox you check out Antonia's update!

Summit is here!

We are thrilled to announce the launch of Summit 2016 with the unveiling of one of our amazing speakers who will knock your socks off!

REIQ CEO Antonia Mercorella launched the Summit marketing campaign with the announcement that keynote speaker for Day 1 would be the sensational US real estate personality, Leigh Brown.

"Leigh is a southern belle with a no-B.S. approach to motivation," Ms Mercorella said. "I know that everyone is going to love Leigh and her energy," she added. Ms Brown spoke at Inman New York earlier this year and received a standing ovation and she said she was looking forward to visiting Brisbane.

"It's an amazing place and I'm really excited!" she said.

"Real estate agents the world over need to hear it straight, that they need to stop making excuses, get off their butts and get out there!" Ms Brown said.



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Young Gums



L-R: Josh Kindred, Bridget Gabites, Jean Brown, Wayde Hildrew, Angela Duncan.

These are the GFC babies, the kids who said, "Screw it, I don't care that it's a recession, I'm going into business."

Introducing the Vanguard of Queensland Real Estate

WORDS BY FELICITY MOORE

Welcome to the Young Guns edition of the REIQ Journal.

Much like Australia has an ageing population, the real estate community is ageing and in Queensland the median age of the real estate agent is 52 years. Just 10 per cent of our membership is aged below 35 years.

Real estate is one of the few professions where age can be a big plus because it implies life experience and in real estate that equates to success. Nothing inspires confidence from a nervous vendor more than an experienced agent who has sold this house a hundred times before; an agent who has seen it all and is a master negotiator. When it comes to talking price experience beats youth almost every time.

And everyone knows that in real estate you have to pay your dues, you have to put in the years, building your network and your systems, learning your scripts and doing the hard yards. Everyone knows it's a long time before success comes knocking.

Or do they?

In this edition we are showcasing some of our profession's best and brightest under-35s; those leading lights who are carving out stellar success despite being fresh-faced and wet behind the ears.

This group of 11 Young Guns (because why limit it to 10?) has ambition in spades. They are impatient and motivated, but most of all, they're savvy and hard-working. They know in their bones that success comes to those who put in the sweat and they don't care what the establishment says, they're going to get it while they're young.

These are the GFC babies, the kids who said, "Screw it, I don't care that it's a recession, I'm going into business."

And this, interestingly, is their defining characteristic. Unlike the Boomers and the Gen Xers before them, these Millennials are not coming of age during an era of economic excess, or a time of plenty. So they don't necessarily share the view that "things will improve" and even if they did, they're too impatient to wait for it.

These ambitious youngsters went into business for themselves at the exact moment when house prices began falling, when their Gen X predecessors were getting retrenched in droves, when newspapers began collapsing and when the mass media fractured to smithereens. These are the entrepreneurs who saw opportunity in Netflix, the guys who understood the power of Twitter, Snapchat, Periscope, Facebook, Instagram, YouTube, LinkedIn, Tumblr and Reddit and in that, found a way to harness it for their own success.

But aside from a greedy urge to succeed, they have little in common with each other.

They know in their bones that success comes to those who put in the sweat and they don't care what the establishment says, they're going to get it while they're young.



These are not cookie-cutter real estate professionals. This group is diverse in backgrounds and personality types. Some are from privilege and some have had it tough. Sure, there are some networkers who pursue the dollars with a laser beam focus, but there are also the misfits who don't care about the dollars because they're driven by something else.

There are those who started in real estate at 16 and those who tumbled into it after a successful career elsewhere (as a zoologist in one amazing case!).

But however they got their start, they all arrived at the door of a real estate agent and found their niche. And that's one of the wonderful things about real estate – it is a broad church that welcomes all.

So to the next generation of real estate agent, welcome. To all the young professionals who are starting out, or who are looking for a mentor or a role model, or perhaps wondering if you've made the right choice, take heart because at one point, most of our Young Guns confess to feeling the same way.

This edition of the Journal is designed to celebrate the next generation of real estate professional, to roll out the welcome mat to our agents of change and say, come on in, the water's fine.

Email feedback: Journal@reiq.com.au.

Age: 29

Accolades:

- Principal by age 20
- REIQ Zone Chair Redcliffe

Joshua Kindred

The boy-king who was a principal at 20

Joshua Kindred only lasted 10 months at university before he abandoned his law and property economics studies to concentrate on real estate exclusively.

“I was overcommitted as hard as I could. I was so excited to get out of school and go as hard as I could at life,” he said.

“Real estate seemed to be something that was going to give me the opportunities and wasn’t going to limit me straight away. I could get straight away into life. I didn’t have to wait four or five years to get a degree and then start, I could start straight away.

“When I began in real estate I just loved it and have every day since then and, as sad as this might sound, just thinking about it I got goose bumps,” the 29-year-old principal of Kindred Property Group said from his custom-made office building at Margate on the Redcliffe peninsula.

Kindred, who struck out on his own in 2008, at the tender age of just 21, has built a team of 24 in sales and property management servicing mainly the peninsula and North Lakes areas. He has transitioned from hands-on selling into a mentoring role, focused on making sure “every day counts” for his colleagues.

“That’s probably the hardest thing in real estate – it’s such a reactionary business. We wait for the phone to ring, we wait for a client or we wait for the

listing, whereas we have to be proactive and we have to make every minute and every hour count and that’s basically how I approach my role now.”

“We have a business with a lot of leaders and they approach real estate in completely different ways – for me it’s just about mentoring them and having great relationships with them, knowing where their stressors are or where they need assistance.”

One of the areas where Kindred gets on the front foot is technology and the digital age.

“My approach to change is that I get excited about it because I believe if I adopt it and do it better than anybody else and basically embrace it as soon as I can, then we’ll be the leaders.”

“So when realestate.com, who are the leaders in internet marketing, come out with something new I say, ‘How can we do it and how can we be first and how can we do it on everything?’”

When Kindred recruits he prioritises personal character – “they have to be a great person, just in general” – and then he strives to maintain a business that matches the calibre of the staff, from which he hopes they never feel the need to leave.

“This should be their last home. Our business should grow quick enough and be diverse enough through real estate that there’s always a role for someone.

“They should never be able to outgrow our business.”

As an example of evolving growth, Kindred has branched out into development with two townhouse complexes now being built on the peninsula, which his team has sold out off the plan. His Kindred Developments has just settled on a further three sites.

- NICK MOORE

Age: 33

Accolades:

- REIQ Medium Residential Agency of the Year Winner 2014
- Business Award Winner – Sunshine Coast Australia Day Awards 2011
- AIM Young Manager of the Year Sunshine Coast 2007
- REIQ Queensland Salesperson of the Year 2005 to 2008
- REIQ Rookie Salesperson of the Year 2002

Amber Werchon

From property princess to queen of the Coast

Amber Werchon's success in real estate was almost instantaneous, serving a swift apprenticeship in her teens and rocketing through the usual term of property management to launch her sales career at just 18.

(She was actually ready to launch into it at 17, but the law requires real estate practitioners be at least 18 years of age).

"I've had a passion for property from a very young age, starting my real estate career as a receptionist for a local agency," she said.

"When you're an achiever – and that's how I describe myself – when you're an achiever and someone who has high expectations of yourself, real estate is a perfect career choice," she said.

It's often said of real estate that you only get out of it what you put in and for Werchon the rewards have flowed from the relentless drive and unending work ethic.

"I learned early on that if you're the hardest worker in the room, the rewards will come. I was the shortest girl in my year, but I played representative netball with an older team because I put the work in.

By 26, Werchon had a clutch of trophies and awards to her name, including REIQ Rookie of the Year, REIQ Salesperson of the Year and Telstra Businesswoman of the Year finalist, to name just a few.

So when many of her peers were barely finished their university degrees, Werchon launched her own agency, Amber Werchon Property.

She went on to dabble with franchising her brand and found that, although success was there, there were issues.

"There were too many parts of it I couldn't control," she said. "I didn't enjoy that part of it at all," she said.

Now 34, employs 45 people and is the REIQ Sunshine Coast Zone Chair.

She admits that the motivators that drove her early success have changed.

"I used to be motivated by money and ego and that's what drove me to want to be the biggest," she said. "But I'm not anymore; now it's more about giving back and helping others achieve their goals," she said.

"I get to employ 45 people and give them jobs and help them become the best they can be and that's important work," she said.



The agency continues to grow organically and Werchon, who loves her home turf of Sunshine Coast, said any ideas of expanding into bigger markets have long since disappeared.

"I have different dreams now," she said. "It's beautiful here and I might consider opening a satellite office that is run by head office, but even that's unlikely," she said.

"I love the Sunshine Coast and love what I do, and that's where I'm pretty lucky," she said.

- NICOLA MCDOUGALL

Wayde Hildrew

The first of the Mohican property managers

In April, Wayde Hildrew added 30 new properties to the rent roll, a monthly figure he'd set himself as a goal.

"The average is about eight to 10 a month for a BDM in Australia," the business development and leasing manager at Ray White Aspley said.

Last year he brought in 238 properties, which averages just shy of 20 a month.

So it's understandable that Hildrew feels he's found his true vocation with property management, specifically in securing new business.

"My goal used to be the rock star sales person but it's just not something that I think is my calling. I'm very good at what I do."

Brisbane-raised Hildrew, 26, quickly

settled into real estate after leaving school at the end of Year 10.

"I was a very bored student so I tended to focus a little bit more on the social aspect of it," said the eldest of nine children (the youngest is 10), who was brought up by his single mum.

He had tried some part-time work in a garage detailing and cleaning up after the mechanics and "found that the hard, sweaty work wasn't really my style, so looked for some office work" and found it in real estate.

"Sometimes you just luck into what you're supposed to be doing and what

you're good at."

He said he shunned the bullshit for which the real estate profession can have a reputation. "The refreshing approach I have is to be brutally honest.

"The biggest thing is being totally transparent and upfront with people." This means discussing not just rewards but risks too and, for example, explaining to a landlord that skimping on their property can hurt rents and tenancy.

In real estate, sales is seen as a career and property management as a job. But Hildrew said his passion for the less glamorous side of the industry impressed landlords.

"The passion is lacking in property management so when you go out there and you are appraising a property and you are passionate about it, it stands out."

What also stands out is Hildrew's Mohawk hairstyle which first appeared when he was trying to make a splash as an inner-city sales agent up against some heavy-hitters. "When you're young and don't have a lot of experience you've got to do something to make yourself memorable.

"But definitely now it's phased more into a branding thing, so if they don't remember my name they'll typically call asking for the guy with the Mohawk."

He sees the hair and the bright shirts and ties as an example of his transparent approach – they show his genuine flamboyance. "People can tell authenticity very quickly and in the end an appraisal or meeting a client is just about people believing you and liking you very quickly and a lot of that comes down to how honest you're being."

- NICK MOORE



Age: 27

Accolades:

- National BDM finalist, Apmasphere



Jean Brown

Who's afraid of the GFC? How lean times created a strong business

Jean Brown built a network, which then built her business.

"Anybody who is at all associated with property I try to build and maintain relationships with those people so that when they have a client who is looking at an investment property or who has bought one and needs to rent it out, they come to us," said Brown, principal and director of Jean Brown Properties on the Gold Coast.

"All of our growth is referral based, we don't do advertising or marketing, it's through building and maintaining relationships with referral agents."

Typically, the referrers aren't paid, said Brown, 34.

"They just say to us, 'Look after our

client, get them the best rent you can and do a great job and we will keep sending them to you!"

Like a lot of young guns profiled in this edition, Brown started working in real estate as a teenager, in her case as a 16-year-old weekend receptionist at an agency at Kingscliff, near Tweed Heads, while still at high school.

"My business has been successful because I do things differently to the principals who I had when I was coming up through the ranks – they managed the business very differently to the way I do," said Brown, whose boutique sales and property management agency is centred on Coomera at the Gold Coast.

"My previous principals were all sales focused, they really didn't have much to do with property management.

"If a landlord phoned up they didn't know who that person was, they never inspected any of the rental properties that we managed, they really didn't want to know about property management."

But six years ago when Brown struck out on her own she put the bulk of her efforts into signing up landlords because the market was still suffering from the GFC "and there weren't many sales being made".

"I knew that if I wanted to eat I was going to have to focus on building a rent roll that would keep regular money coming in so that I could pay the bills and I thought the sales would come."

People questioned her sanity when she braved the aftermath of the GFC to start her own agency "but in my mind I just thought, 'If I can make it now, if I can get through this tough time, when the market improves and everything gets better it will be smooth sailing'"

Now she has 330 properties on the books and is aiming for 400 by year's end.

"I'm still really hands-on today. I inspect every property that we've got under management. If a landlord rings up I know every single one of them individually.

"That's been my main difference, I always focus more on relationships and always think long-term and in previous companies I've worked for the principals have probably been the opposite of that.

"They've probably mainly focused on commission and turning over sales."

Her generation has a greater awareness "that the value of our businesses is really in our rent roll", revealed the mum of one, a two-year-old boy.

"There's a lot more focus on property management, even the training events and the conferences. When I started in the industry there was none of that for property management. It was all sales based.

"There's been a big shift in mindset. People of my age group don't regard property management as the ugly duckling anymore."

- NICK MOORE

Justin Nickerson

Hammer time! Bidding for success

Justin Nickerson holds the record as three-time REIQ Auctioneer of the Year, an honour he shares with fellow Young Gun, Jason Andrew (see page 19), but it's his business acumen that has won him a spot in this year's Young Guns list.

This 31-year-old came into auctioneering after a career as an AFL recruitment and development manager, and, as far as tough sells go, selling AFL in one of rugby league's heartlands has got to be one of the toughest.

It was while based in Mackay (and studying business externally at university) that he bought his first house in the northern beach suburb of Slade Point and that's what sparked his interest in property.

"As much as I enjoyed working with the AFL I wanted to keep football

as a hobby or a passion, rather than working in it every day.

"And like a lot of people do, I thought, 'Gee that real estate caper seems like not a bad way to go'"

He tapped his old Sandgate network and was offered a job at the local Ray White, which involved selling for four years – the last of which was combined with auctioneering.

"I was enjoying calling auctions a lot more than I was enjoying selling and I'm a big believer that if you enjoy

what you do you are going to do it a lot better than if you are just turning up and doing it because you have to."

Nickerson, 32, said being a solo auctioneer was quite a "selfish occupation" and chose to branch out, establishing Apollo Auctions, which today boasts five auctioneers.

Nickerson said he was proud he'd been able to evolve his mindset to "OK, how does this benefit our team and how can I get work that might benefit my team members rather than benefit me directly.

"I'm proud of that because I don't think that's an easy thing to do.

"We see a lot of good sales agents who succeed because of their singlemindedness and determination and their ability to block everything else out. But then they become principals and don't do that successfully because it requires a completely different skill-set."

The Australasian Auctioneer of the Year finalist (2013, 2014) is also applying his skills to building up Apollo Training, which offers coaching, mentoring, in-office training, conferences and, as of this year a "secret shopper" service so far covering 500 agents in Queensland, NSW, Victoria and WA.

What he has discovered is that agents have embraced technology more than was anticipated but struggle in "old-school" personal follow-up communications.

Nickerson also supports raising the requirements to work in real estate. "Being able to enter our industry and work within a week and deal with such a huge asset that people own is a pretty dangerous thing in a lot of cases."

- NICK MOORE



Age: 32

Accolades:

- REIQ Auctioneer of the Year 2013, 2016, 2017
- Australasian of the Year finalist 2013, 2014

Age: 26

Accolades:

- Ray White Elite Performer (>\$500,000 gross settled commission) 2015, 2016
- A List Performer 2015, 2016
- Ray White Qld Young Agent of the Year 2010, 2011
- Ranked #18 in Ray White Queensland (gross commission)
- Ranked #6 in Ray White Queensland (sales transactions)

Angela Duncan

An agent of change for a changing industry

Like a lot of our young guns, Angela Duncan started early in real estate – in her case it was a school-based traineeship working Mondays and Saturdays in a small agency.

“I was always really drawn to real estate from really young, much to the upset of my parents,” the Ray White Aspley agent said.

Duncan, 26, said she did well at school and her folks were “surprised I wouldn’t want to go to uni and be a doctor or lawyer or something a little bit more expected.

“They definitely didn’t think that people leave school wanting to be a real estate agent, particularly nearly 10 years ago.

“They were very supportive very early on but they were definitely surprised.”

In the early days, she was exposed to demanding expectations and rigorous testing of her desire and commitment.

She was part of a cadet program where “half the day was spent on the phone and the other half was spent doorknocking so you weed out whether you really want it or just want to do the fun part”.

Duncan also served as personal assistant to a strict agent who would “crack the whip”.

“You were under the microscope all the time ... there was no leaving early or having days off.

“(If you) start really hard, the rest seems easy,” said the newly married Duncan, who sells mostly around Boondall and Taigum in Brisbane’s northeast.

The Ray White Young Agent of the Year for 2010 and 2011 now has two PAs of her own and she predicts her team will sell more than 70 properties this year.

She believes the industry has come a long way even in the relatively short time she’s been involved.

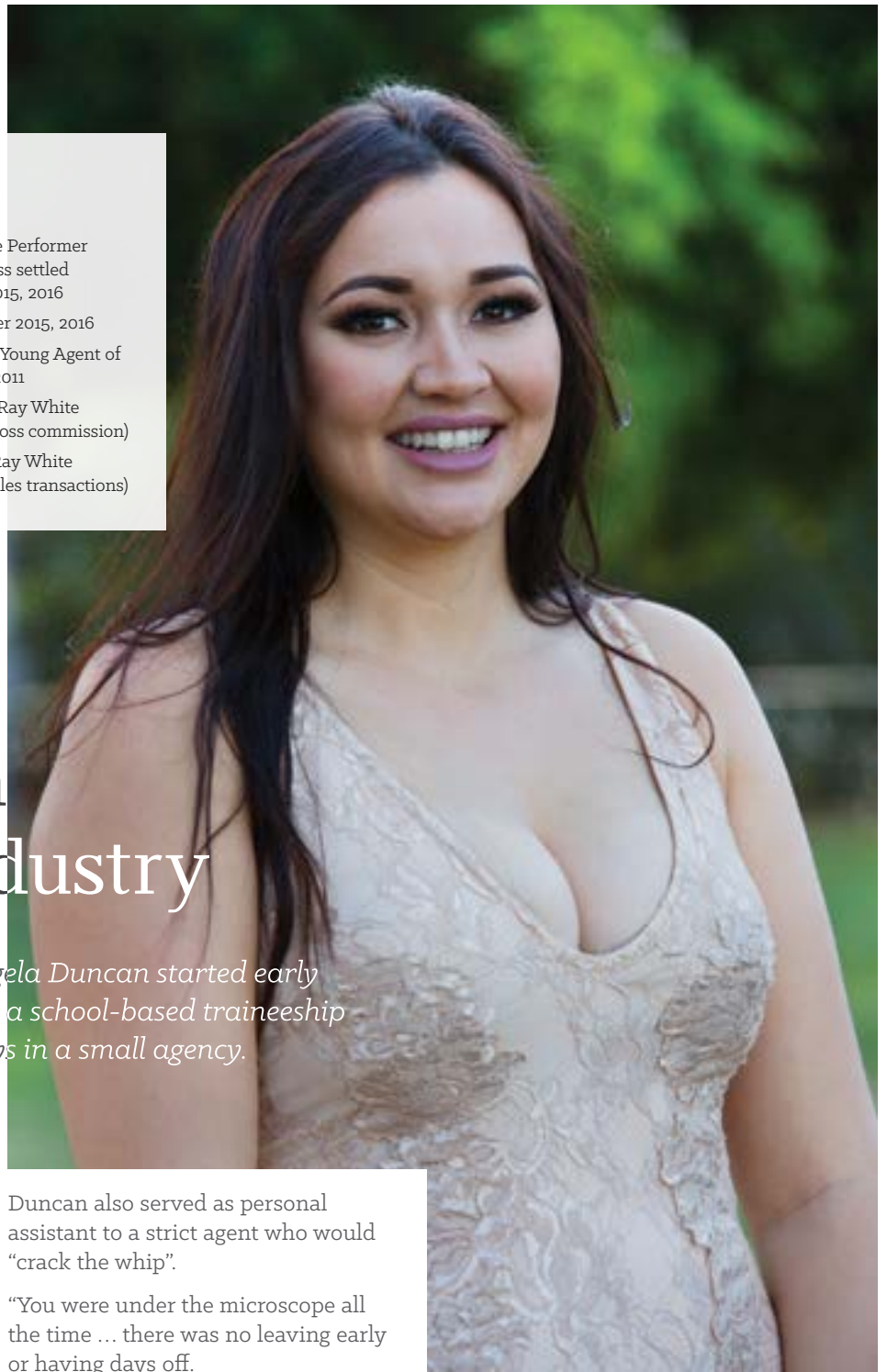
“Real estate even 10 years ago was still a little bit ‘put a sign up and wait for the phone to ring”

Now agents are highly trained and skilled in “marketing plans, pricing strategy, and how you work with the client”. Plus technology and social media have “just taken everything to the next level”.

The next level for Duncan is to take on a bigger involvement in recruitment for the broader Ray White Aspley organisation, which she says has 100 staff.

One day she sees herself stepping out of sales and into management “and overseeing a far bigger team”.

- NICK MOORE





Age: 30

Accolades:

- Three-time REIQ Auctioneer of the Year – 2009, 2012, 2014
- 2010 Australasian Auctioneer of the Year

Jason Andrew

Have gavel will travel

He's one of the best-known auctioneers in Queensland and is a regular auctioneer in New Zealand, travelling to the land of the long white cloud every week to bring down the gavel on a booming international auction business.

He has been named the best in the State an impressive three times since 2009 and has also won the top Australasian auctioneering gong in 2010 – and he's not yet 31.

Jason Andrew has been living an auction life for more than a decade, after taking his first steps in real estate in 2003.

"I started with a Ray White cadetship but I went out and did a lot of property management to begin with and then I made the change over into sales," he said.

"When I made that change I went out and saw Haesley Cush call an auction and it was at that moment that I realised that was what I wanted to do.

"I moved across to RE/MAX and Dane Atherton was the chief auctioneer there at the time and he took me under his wing from 2005.

"It was having the right people around... That's how my story progressed. It was being with the right people at the right time."

In 2007, Jason went out on his own and established what is now the Jason Andrew Group, which employs four auctioneers and two office staff. His agency now calls auctions across the country and in New Zealand, and is committed to developing long-term relationships.

"A number of years ago I had someone basically say to me 'I don't care who you are or who you think you are, I've had a relationship with my person for a long period time so you're not getting the business' and that conversation essentially completely changed the mantra of my business.

"It became about building relationships instead of making it about self," he said.

Even after a decade of auctioneering he still loves the business and the fraternity.

Even at the young age of 31, Jason is already thinking about the next generation of auctioneers, working with schoolkids in some of Brisbane's elite private schools in the Auction

Idol competition.

"It's about growing and developing talent... if we can create better auctioneers and better run auctions from an agent's perspective then there will be more auctions conducted.

He's also passionate about raising the popularity of sale by auction in Queensland, one of the lowest auction-rate states in the country.

"Auctioneering is very much about sharing the knowledge of what we've done, because what we understand is that a poor auction in a market that has always been naive to auctions will only harm our chances of getting more in the future," he said.

"Being part of that transition process -- so 10 per cent of the stock being auctioned and 90 per cent being private treaty – being part of the conversation of taking that towards Sydney and Melbourne, where it's 30, 40 or 50 per cent of the stock, that's something that's really exciting."

- NICOLA MCDOUGALL

Katie Knight

A Knight's tale of law, family and real estate

Her first career choice was law but Katie Knight detoured into real estate at her father's request and now owns the business he founded, bagging a swag of awards along the way.

Katie, who is now the owner of RE/MAX Success, had been around the sector from childhood given her father was in the profession for 30 years before recently retiring.

But even with that familial connection, she originally considered studying law.

"When I left school it was to head to Brisbane to study law, but my dad had not long opened his own agency and my sister was getting too busy in administration, so he asked if I would defer for one year to come in and help out, 'so your sister can have a toilet break at least,'" she said.

"Well, as many people will be able to relate, the real estate industry is a phenomenon that you either love or hate... and I was the former.

"I really enjoyed the problem-solving side of real estate and worked my way through sales administration, marketing and then on to property management, which is my true calling."

Knight has been named the REIQ Property Manager of the Year an extraordinary five times since 2008 and won the national award in 2010.

She continues to consider her position in the sector a privilege and never loses sight of the important role that she and her agency fulfil in their client's lives.

"We are privileged in our role to help people in some of the most important and often stressful times of their lives," she said.

"It's an honour to be invited in to the lives of our clients and customers

who instil their faith and trust in us and our processes to achieve the very best result possible.

"It's humbling to be able to lay down at night and know you've made a real difference in someone's life (often many people's lives) that day."

Knight now owns the agency her father founded and said she learned a lot from her mentors.

"I've actually tried not to change too much from what I was taught by those who went before me – that is, treat others as you would expect to be treated; be a person of integrity; and don't be afraid of a long day's work to deliver what you've promised," she says.

"I admire people of integrity – you give your word and stick to it. I do my best to follow these guides in all aspects of my life – to be someone full of solutions, not excuses."

- NICOLA MCDUGALL

Age: 35

Accolades:

- REIQ Residential Property Manager of the Year 2008, 2010, 2012, 2014, 2016
- REIA Residential Property Manager of the Year 2012



Bridget Gabites

East meets West in a balance of drive and ambition

One of the top real estate agents in Brisbane's inner-city Kelvin Grove is actually a zoologist from the small town of Timaru in New Zealand, and who has just qualified as a yoga instructor.

"I hyper-explain what I do," said Harcourts agent Bridget Gabites, 33.

"If somebody asks me what my job is I'll often let them know that I was a scientist before I was a real estate agent to try to give me some credibility.

"I haven't thought of that before but I do actually over-explain what I do.

"I'll often explain why I'm a real estate agent and why I'm different."

Gabites left New Zealand for Australia in 2006 aged 23. For five years prior to the switch to property she sold high-end medical imaging equipment, parlaying her NZ scientific qualifications.

But she grew tired of the travel – "I knew I needed a change" – and began researching other careers that would suit her sales and marketing talents, and noticed a lot of real estate jobs on Seek.

"I kinda liked that you could work locally, there was no travel, that you could work as few or as many hours as you liked, and the amount of effort you put in was the amount of reward you would get."

Gabites has been with Harcourts since her start six years ago, at first covering The Gap and Ashgrove but for the past four years concentrating on Kelvin Grove and Herston.

She sold 52 properties last year and for the past 12 months she made 35 sales in Kelvin Grove alone.

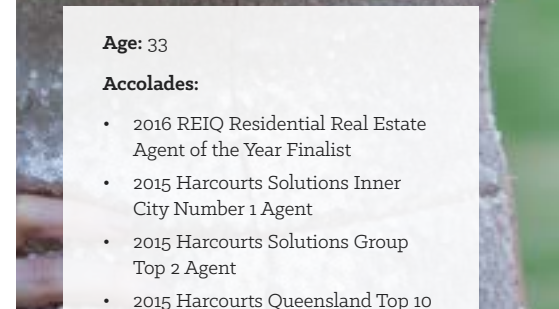
Her method involves planning and structure "and sticking to them".

"It's like a race horse with blinkers on and just running the race that you've chosen to run. It means I've made my success come quicker than a lot of agents by being fairly regimented.

"I do a lot of goals-based planning so what that means for me is that I know exactly what I need to do to get the results that I am aiming for."

Gabites said to survive and thrive the industry must emphasise its personal and customised approach, which has real value in an increasingly impersonal and cookie-cutter world.

"When everything is so computerised and regimented and set in stone, to have someone sit in front of them saying that they are unique and their property is unique and the situation is unique and all those things need to be dealt with in an individual and customised way, it makes them feel really confident that the value you are adding to them is worthwhile."



Age: 33

Accolades:

- 2016 REIQ Residential Real Estate Agent of the Year Finalist
- 2015 Harcourts Solutions Inner City Number 1 Agent
- 2015 Harcourts Solutions Group Top 2 Agent
- 2015 Harcourts Queensland Top 10 Residential Sales Person of the Year
- 2015 Harcourts Australia Top 40 Residential Sales Person of the Year

As hardworking and motivated as she is, Gabites also strives for balance through Eastern philosophies, which led her to take her yoga to the next level with a teaching qualification.

- NICK MOORE

Nathan Wunsch

From construction to buyers' agent, building a new career

It takes a lot of courage to change careers after 10 years but this is exactly what buyers' agent Nathan Wunsch did about two years ago.

Age: 30

Accolades:

- Finalist 2016 REIQ Buyers Agent of the Year
- Member of REIQ Buyers Agent Chapter committee



His love of all things real estate saw him leave a successful career in construction to take up a role with Property Pursuit and he said it was a decision that he's grateful he made every day since.

"I'd always had a love of real estate and working in the construction sector, along with some personal investing, really fuelled that passion," he said.

"I looked at all aspects of the

profession and had a real affinity with the buyers' agency sector.

"I was really fortunate to land my first job in the industry with the most amazing team, working with people who are really respected across the whole real estate profession and passionate about what they do."

That passion is something which

Wunsch clearly shares, ever since he was a young boy building houses out of Lego.

He is also dedicated to providing the best service to the agency's clients, who can be spread across the globe.

"Our business is all about guiding our clients through every step of the property purchasing process and keeping them fully involved and informed along the way," he said.

"Given our clients can be based in many different countries and time zones, we've developed a number of applications in which our clients have personal profiles, and this allows them to access up-to-date details of their property search twenty-four-seven."

Wunsch has been on a steep, but fulfilling, learning curve over the past few years, culminating in a partnership in the Property Pursuit business.

"I see this as my long-term career path – to continue to grow our business and develop my relationships across the real estate industry," he said.

"I also have a real passion for our sector of the real estate industry and helping to build the profile of buyers' agents. I'd love to see our profession become well-respected, valued and far more commonly recognised within the general public.

"My role model happens to be our director at Property Pursuit, Meighan Hetherington. I am so lucky to have the opportunity to work with someone on a daily basis who has such passion, knowledge, experience and success, but is also someone I really admire and look up to as a person."

- NICOLA MCDOUGALL



Age: 25

Accolades:

- On Queensland's A-List – top 155 agents in the State
- #41 on REB's Young Gun list for 2015
- Member of LJ Hooker's Multi-Million Dollar chapter of their Captain's Club

Jonathan Wein

A captain of industry in the making

Jonathan Wein launched his real estate career at 18 and by 23 had already earned entry into the prestigious LJ Hooker Captain's Club, a club limited to the top 15 per cent of the network, and who write more than \$330,000 in gross commissions in a 12-month period.

By 24, Wein entered the Multi-Million Chapter of the Club – the top seven per cent of the network writing more than \$450,000 in gross commissions in 12 months.

Starting out in real estate, having youth on your side and energy to burn can be a secret weapon.

"I think my energy and enthusiasm for the job is something that separates me from the rest – despite being in the industry for seven years now I am still only in the early stages of my sales career and have an incredible desire to be as successful as possible," he said.

Wein has already made the Queensland A-List and last year was listed #41 on the Real Estate Business

Young Guns list, a list recognising the top 100 agents in Australia under 30 years of age.

He has plans to scale even greater heights in the next chapter of his career.

"I'm pretty happy with how things are progressing in my career at the moment however, I've still got plenty of targets I want to hit," he said.

"The next goal is to hit the top 2.5 per cent throughout the LJ Hooker network and a goal in the next five years is to hit number one on the Real Estate Business Awards Young Guns List.

"Eventually I think I would like to buy into the business here but that's a while away yet, so for now I'm just making the most of every day that comes."

Like other young guns on the REIQ list, Wein credits mentorship as a crucial element behind his success and a willingness to learn from the wisdom of those who are more experienced in the profession.

"I think my biggest role model has to be my principal, Jason Chandler. He has taught me everything I know in the real estate industry, which has allowed me to grow and progress into the agent and person I am now," Wein said.

"He's been very successful throughout his career, which is something I obviously want to emulate," he said.

- NICOLA MCDOUGALL

Your training plan for July and August!

Lock in your dates now for some great courses on offer in July and early August.

I Love PM

The second property management feature day for 2016 has been designed to celebrate and focus on positive property management strategies. Learn how to navigate through everyday property management situations by knowing and understanding the legislation and sorting facts from fiction. Learn how leading property management practitioners use authentic and smart communication techniques to influence positive client and customer relationships and minimise conflict. We'll look at real life every day property management scenarios and best practice tips to take back to your office to implement immediately. With sessions on legislation, investigations, a QCAT update and top compliance issues including the Form 6, this is an information-packed day for property management professionals.

Dates: Brisbane 5 August

It is time

The catch phrase 'location, location, location' is most certainly synonymous with real estate and well understood. What about 'timing, timing, timing' though? When is the best time to better understand the intricacies of working with family members, how to minimise conflict in business partnerships or why setting up good governance frameworks is important for business stability? Surely, there can't be a better time than now? Whether you are family in business or in a business partnership, you will benefit from participating in this workshop facilitated by Susanne Bransgrove, who will provide you with insights and tools to take back to your own business.

Dates: Brisbane 3 August

Business Planning and Financial Management of a Real Estate Office

A workshop for all principals and senior managers interested in knowing about:

- Effective agency management
- Financial performance analysis of your agency
- Knowing the actual cost of a desk
- Office costs and income comparison with other offices
- Introduction to preparing your budget (including worksheets for all staff)
- Preparing a business plan
- Financing growth or acquisition of another business
- What to prepare if considering the sale of your agency

Dates: Brisbane 22 July

Team Goal Setting, KPIs, KPTs and Measurement Tools for Success

In this session we'll cover:

- Understanding how to set realistic office goals and achieve them, after having set the team's goals
- The difference between KPI's & KPT's and how this will affect your bottom line
- The No.1 reason most people don't achieve their goals and how you can avoid failure
- Why having a plan for success is so important
- The 4 biggest mistakes in setting achievable goals
- Why working backwards to achieve your goals is paramount
- Find out how you can assist your team to achieve their goals by using our easy tools for success
- And a whole lot more... including templates to take away.

Dates: Gold Coast 2 August, Brisbane 23 August

Creating Cultural Change in your Organisation

- Adopting effective leadership strategies that deliver outstanding results from your team
- Becoming an employer of choice
 - Creating brand ambassadors
 - Team engagement
 - Learn how to identify disengaged employees
 - The pre-recruitment process
 - New employee induction programs
 - Performance management
 - How to hold successful career nights

Dates: Brisbane 19 July

Effective Agency Administration and Corporate Support

This session focuses on documentation, legislation and practical guidance for administrators. Efficient and well trained administrators are the backbone of any successful agency. Keep up-to-date with best practice and compliance issues, and learn how to implement and improve office processes and procedures.

Dates: Brisbane 28 July, Gold Coast 11 July, Sunshine Coast 13 July

Trust Accounting for Agency Principals and Managers

Use basic accounting skills coupled with knowledge of your real estate business to accurately manage the trust account records and eliminate the risk of trust account misappropriation and errors.

Dates: Brisbane 28 July, Gold Coast 11 July, Sunshine Coast 13 July

Webinars and Online Videos

There is also a little something for everyone online this month, with the next webinar in our Commercial series focusing on a review of changes to the RSLA (18 July), the monthly Property Management webinar looking at Prospecting and direct marketing in property management, and the first interview of the brand new Sales Success Series in late July.

Property Management Breakfasts

Set your alarm clock a little earlier and join the REIQ's Property Management Support Service team for your local Property Management Breakfast!

Coming up in Brisbane on 21 July, Sunshine Coast on 27 July and Gold Coast on 28 July.

For more information and to enrol, visit reiq.com or email jmcquire@reiq.com.au.

**Registration and Licensing Courses
July - August 2016**

BRISBANE	
5 - 8 Jul	9.00am - 4.30pm
12 - 15 Jul	9.00am - 4.30pm
26 - 29 Jul	9.00am - 4.30pm
2 - 5 Aug	9.00am - 4.30pm
15 - 18 Aug	9.00am - 4.30pm
30 Aug - 2 Sep	9.00am - 4.30pm
29 Aug	Registration evening classes commence 8 evenings (6 - 9pm Mon and Tues)
GOLD COAST	
12 - 15 Jul	9.00am - 4.30pm
26 - 29 Jul	9.00am - 4.30pm
15 - 18 Aug	9.00am - 4.30pm
30 Aug - 2 Sep	9.00am - 4.30pm
1 Aug	Registration evening classes commence 8 evenings (6 - 9pm Mon and Tues)
SUNSHINE COAST	
19 - 22 Jul	9.00am - 4.30pm
23 - 26 Aug	9.00am - 4.30pm
HERVEY BAY	
5 - 8 Jul	9.00am - 4.30pm
TOOWOOMBA	
19 - 22 Jul	9.00am - 4.30pm
23 - 26 Aug	9.00am - 4.30pm
TOWNSVILLE	
11 - 14 Jul	9.00am - 4.30pm
CAIRNS	
26 - 29 Jul	9.00am - 4.30pm
30 Aug - 2 Sep	9.00am - 4.30pm

Resident Letting Agents Licence

BRISBANE	
18 - 22 Jul	9.00am - 4.30pm
GOLD COAST	
8 - 12 Aug	9.00am - 4.30pm

Career Networking Lunches

BRISBANE	
14 Jul	12.30 - 1.30pm
17 Aug	12.30 - 1.30pm
GOLD COAST	
28 Jul	12.30 - 1.30pm
SUNSHINE COAST	
25 Aug	12.30 - 1.30pm

**Specialised Courses
July - August 2016**

PROPERTY MANAGEMENT	
Property management documentation and legislation refresher	BRISBANE: 24 Aug (1.00pm - 4.30pm) GOLD COAST: 19 Aug (9.00am - 12.30pm) SUNSHINE COAST: 15 Aug (1.00pm - 4.30pm)
Management rights induction	GOLD COAST: 25 Aug (9.00am - 4.00pm)
Feature Day - I Love PM	BRISBANE: 5 Aug (9.00am - 5.00pm)
Property management webinars: Webinar #1	Prospecting and direct marketing in property management: 19 Jul (11.00am - 12.00pm)
Property management webinars: Webinar #2	Coordinating a changeover of managing agent professionally and efficiently: 23 Aug (11.00am - 12.00pm)
Property management breakfasts	BRISBANE: 21 Jul (round 1) (7.15am - 8.45am) GOLD COAST: 28 Jul (round 1) (7.15am - 8.45am) SUNSHINE COAST: 27 Jul (round 2) (7.15am - 8.45am)
AGENCY MANAGEMENT AND ADMINISTRATION	
Business planning and financial management of a real estate office	BRISBANE: 22 Jul (9.00am - 12.30pm)
Trust accounting for agency principals and managers	BRISBANE: 28 Jul (1.00pm - 4.30pm) GOLD COAST: 11 Jul (1.00pm - 4.30pm) SUNSHINE COAST: 13 Jul (1.00pm - 4.30pm)
Effective agency administration and corporate support	BRISBANE: 28 Jul (9.00am - 12.30pm) GOLD COAST: 11 July (9.00am - 12.30pm) SUNSHINE COAST: 13 July (9.00am - 12.30pm)
Creating cultural change in your organisation	BRISBANE: 19 Jul (9.00am - 12.30pm)
It is time	BRISBANE: 3 Aug (9.00am - 12.30pm)
Team goal setting, KPIs, KPTs and measurement tools for success	BRISBANE: 23 Aug (9.00am - 12.30pm) GOLD COAST: 2 Aug (9.00am - 12.30pm)
COMMERCIAL AND BUSINESS BROKING	
Commercial webinar series #3	Retail Shop Lease Amendment Bill 2015 - a review of changes to the RSLA: 18 Jul (11.00am - 12.00pm)



Matters to consider after a severe weather event

WORDS BY KIM COFFEY, PROPERTY MANAGEMENT SUPPORT SERVICE

When a vast quantity of water rains down in a very short period of time, followed by a couple of days of very strong winds as happened recently in south-east Queensland – a property manager’s phone is going to start ringing!

According to reports, in a three hour period Deception Bay rain gauges recorded 157 millimetres, and in 24 hours 382 mm fell in Upper Springbrook in the Gold Coast hinterland. The CES took about 500 calls from Brisbane residents, and 500 from other areas, mainly relating to minor flood damage and leaking roofs but also some from people trapped in cars as a result of flash flooding across roads. More than 100 properties in Noosa and over 4000 homes in the Gold Coast area were left without power. Sadly, an enormous fig tree next to the Normanby Hotel in Brisbane fell over! It certainly wasn’t anything approaching the sort of cyclone aftermath that property managers in the north of our state are sometimes called upon to manage, but it was definitely a significant weather event.

Power outage

Of course a tenant is going to have to wait it out like all other electricity consumers. Initially a tenant may not realise that it’s not ‘just them’, that it is in fact the entire suburb or region that has no electricity. Property managers should have relevant Energex contact information on hand to provide if asked. A tenant can go to www.energex.com.au/power-outages/emergency-outages on their portable device and

search their postcode, or phone 13 62 62 to seek further information on when power is likely to be restored.

Run-off water

Although design standards and water management plans will generally ensure that normal rain volumes effectively drain away, sudden heavy rain events can impose an unusual burden on ground absorption, and on gutters, drains and swales that would normally carry the water away from buildings. If water does pool at a property, it may just be a matter of waiting for it to resolve. If it becomes a persistent or recurring problem then the property owner should have the drainage situation re-assessed to ensure this does not become a health or safety risk.

Water inundation

A heavy rain event causing water to go where water doesn’t normally go, can mean anything from a few rivulets of water flowing across an under-house concreted storage area, to a tenant standing waist deep in water in their lounge room. If water inundation occurs, depending on the severity and impacts, the tenant may need to evacuate, or contact the SES at the time, on 132500. For low level flooding, the Property Manager could make enquiries as to whether SES

or council could assist with sandbag placement to reduce further damage to the lessor’s property. The SES provides a fact sheet on the use of sandbags at www.disaster.qld.gov.au/Be_Prepared/sandbagging.html

Where safe to do so, the tenant would reasonably be expected to minimise impacts – such as moving their belongings to a dry area, and perhaps tying curtains up off the ground and turning off power at the main switch.

Once the water has subsided an assessment can be made, including an electrical safety inspection where appropriate. It may be relatively minor, or severe, but repairs will be part of an insurance claim against the lessor’s insurance. Procedures and requirements can vary between insurers. A lessor’s insurance will not cover the tenant’s belongings, which is why it is best practice if tenants are given the recommendation to insure their own belongings at the start of a tenancy.

If repairs take an extended time, or where a tenant temporarily cannot reside at the premises, or if a tenant believes the standard of the premises has been substantially decreased, or they have lost significant amenity (lost use of rooms, inclusions, connected services, or facilities that were part

of the agreement) - they could seek to negotiate a rent reduction for the duration. A Property Manager should consider what is reasonable in the circumstances, and help lessors and tenants maintain realistic expectations. Parties can reach mutual agreeable outcomes through self-resolution, or seek assistance through RTA mediation, or seek an order at QCAT. In some instances it may be beneficial to show the lessor and tenant examples of published QCAT decisions about similar matters, to educate them about the likely outcome if the matter does proceed to QCAT. This might persuade either (or both) of them towards being more receptive to reasonable negotiation.

If the tenant believes the property condition is no longer such that the tenancy can continue, they could serve a Form 13, effective immediately, under sections 305 and 331(2)(c) of the RTRA Act. If the lessor/agent disagrees with the Form 13, they can make an application to QCAT in accordance with section 424, even if the tenant has already vacated by the time the matter is heard. QCAT may make an order requiring the tenant to pay what is considered appropriate compensation for any loss or expense the lessor incurred as a result of the tenant having vacated. If it is the lessor/agent who believes the property condition is not such that the tenancy can continue, they can serve a Form 12, effective immediately, under sections 284 and 329(2)(d) of the RTRA Act. If the tenant does not vacate an application could be made to QCAT for failure to leave, and a QCAT order can be made under section 340.

Leaking roofs

Again, severity and impact can vary greatly, from a slow drip onto the verandah even though it has never leaked before, to an instant indoor waterfall rivalling Niagara. It can result from blocked gutters causing water to back up on the roof, or seep in through eaves, or from holes in or damage to roofing materials. Where safe and reasonable to do so, the tenant would be asked to minimise impacts by placing buckets to catch drips, or turning power off at the main switch where appropriate. Depending on the severity and impacts, the tenant may need to

evacuate, or contact the SES for a roof tarp, on 132500.

As with inundation, after the event the cause and damage will need to be assessed, and would generally involve a lessor insurance claim.

Property Managers could aim to prevent some of these problems by recommending that owners have a regular maintenance plan in place for gutter cleaning, and by encouraging owners to have roofs checked for deterioration at a reasonable frequency.

Swimming pools

Rain falling into the pool would have otherwise fallen onto the ground. So even if the pool overflows it will only be to the extent of the volume of rain falling.

However a pool may not have been designed and constructed to be waterproof right to the top, but only to the top of the tiles, which is why some pool companies recommend returning the pool to the normal water level as soon as is reasonable to do so. This can be done using the pool's backwash setting, or by siphoning the water. Because pool water contains chemicals and other pollutants, care must be taken to ensure compliance with requirements for drainage of pool water imposed by state government (EPA) and by the relevant local council. If a tenant is going to be expected to do this then the property manager should ensure that the tenant is familiar with the operation of the backwash function and correct method to use. As best practice, this type of information could be provided to new tenants upon moving in, to suit their particular property. It would originally be sourced from the property owner, the manufacturer or an experienced pool company.

After a significant rain event the pool may need some additional care. Things will have been added to the pool that will impact on the water quality, as well as normal chemicals being diluted by the addition of rain water. If a pool company is engaged to look after the pool then they will do what needs to be done. Where a tenant is expected to care for the pool as a term of their tenancy then they may benefit from some guidance and advice after a weather event – and remember, the goal is to ensure the owner's pool stays in good condition.

Specific information can be sourced from a pool company to help inform tenants, but generally they will recommend the following types of things:

- The pool will need to be cleaned to remove dirt and leaf debris that has washed or blown in.
- Ensure the correct water volume level as noted previously.
- Fertilisers and lawn products may have been washed into the pool water so check for phosphates, and add phosphate remover to prevent algae attacks.
- Test the pH and alkaline levels which can be affected by the volume of rain water that has been added to the pool. Add relevant chemicals to balance these levels.
- Test copper levels which can be impacted on by contaminants being washed into the pool.
- If the pool looks cloudy, for a salt water pool use an oxidiser as per the instructions on the packaging and run the pool pump for a few hours. For a chlorine pool, 'shock' the pool by adding a lot more than the usual quantity of chlorine. Avoid swimming in the pool during these processes.

Fallen trees

The SES will assist with emergency situations caused by fallen trees, but their resources are generally stretched to their limits during a severe weather event. If the situation is not an emergency, removal of fallen trees will be another post-event task to be organised. If the tree belongs to a neighbour but has damaged the rental property, the 'tree-keeper' (the neighbour) is responsible for the damage caused by their tree.

www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/avoiding-fence-tree-and-building-disputes/your-responsibilities-as-a-tree-keeper/

If the tree is not on private property the local Council would remove the tree. For example, the Brisbane City Council has a page on their website that can be used to report trees on public land that have fallen or are otherwise causing an obstruction of some sort.

www.brisbane.qld.gov.au/about-council/contact-council/report-it-tree-removal



New tax rules for properties \$2 million and above

New withholding tax rules for \$2m-plus properties.

From 1 July 2016, new tax rules will apply on any property transaction where the market value of the property is \$2 million and above.

Although the new laws are aimed at foreign residents, real estate agents must be aware that these new laws also impact Australian residents selling properties above this value.

Summary

The new laws require a purchaser to withhold 10 per cent of the purchase price of real property valued at \$2 million or more and to pay that amount to the Australian Taxation Office (ATO) on settlement unless the seller obtains a clearance certificate.

The new laws will start on 1 July

2016 and are aimed at vendors who are 'foreign persons'. However, it will impact all property transactions valued \$2 million and over, irrespective of whether the vendor is a foreign person or not.

For any sale contract entered into on or after 1 July 2016 where the purchase price is \$2 million or greater, the purchaser has a statutory obligation to withhold 10 per cent of the purchase price at settlement from the vendor and pay that amount to the ATO. Following settlement, the vendor applies for a tax credit in relation to the amount withheld by the ATO for the capital gains liability arising from the transaction.

This means that Australian resident

vendors who are selling property with a market value of \$2 million or above will need to apply for a clearance certificate from the ATO to ensure that their sale proceeds are not withheld.

How can your clients obtain a clearance certificate?

The ATO will only issue a clearance certificate to a vendor that is not a 'foreign person' for taxation purposes.

Any vendor that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue. The certificate may be used for multiple property sales within the 12-month period.

From 1 July 2016, new tax rules will apply on any property transaction where the market value of the property is \$2 million and above.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 10 per cent of the purchase price at settlement and the full sale proceeds are to be released to the vendor.

How do Australian residents obtain a clearance certificate?

A vendor who is an Australian resident can obtain a clearance certificate by making an application on ato.gov.au/FRCGW from 27 June 2016.

If the vendor is automatically assessed as an Australian resident, a clearance certificate will be issued within days of the application however, the process may take longer for more complex applications.

When does the clearance certificate have to be given?

Australian resident vendors must give the clearance certificate to the purchaser on or **before settlement occurs** to avoid the purchaser withholding 10 per cent of the purchase price.

What if my client is a foreign person?

Where the vendor is a 'foreign person', the purchaser must retain 10 per cent of the purchase price and pay that to the ATO at settlement, unless the vendor provides a valid 'Variation Notice' in which case the purchaser must remit the amount stated in the notice.

When will the new laws apply?

The new laws will apply to sale contracts (for \$2 million and above) entered into on or after 1 July 2016.

What types of properties do these rules apply to?

All property including, vacant land, residential property, commercial property, strata title and community titles schemes.

What does this mean for agents?

Australian resident vendor/s

- If you are appointed to sell a property and you consider its market value to be \$2 million or more then you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 10 per cent of the purchase price being withheld at settlement.
- If you are unsure about the ultimate purchase price but there is some prospect that it may sell for \$2 million or above (for example, it is being sold at auction and the purchase price is unknown or it is being sold by expression of interest) you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 10 per cent of the purchase price being withheld at settlement.

Foreign resident vendors

- If the purchase price is \$2 million or above and the vendor is a foreign resident, you should advise them that 10 per cent of the purchase price will be withheld at settlement by the purchaser and provided to the ATO.

Will the REIQ amend its contracts?

Yes, all REIQ property sale contracts (residential and commercial) will be amended to include provisions which reflect the above new tax rules.

Where can I find more information?

You can find more information on the ATO fact sheet for real estate agents.

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Toowoomba is currently experiencing unprecedented infrastructure investment, which has triggered a positive multiplier effect in the economy.

Toowoomba— Solid Regional Market in south-east Queensland

Toowoomba's residential property market is reporting solid and consistent growth, while remaining an affordable region in Australia with reasonable proximity to a capital city.

Significant and large infrastructure projects are in place, supporting a positive and stable outlook.

Owner-occupiers are driving the market but it is expected that investors may soon return to the market thanks to Toowoomba Second Range Crossing (TSRC) providing jobs and bringing workers to the area.

Solid Residential Property Market Trends

The annual median sale price growth for houses and units has been consistent and solid in Toowoomba for the past 30 years. The largest jump in property prices occurred during the first years of the millennium with median prices for houses and units doubling in just four-and-a-half years.

House listing numbers to February 2016 have fallen over the past year by 10.4 per cent. Vendors are currently holding and waiting for the political environment to become more stable. Many are also hopeful that an influx of investors will drive demand for listings and drive price growth. Buyers are more cautious and do not show a sense of urgency in making decisions.

Despite the softening in the number of properties sold for the 12 months to February 2016 (14.7 per cent for houses and 27.1 per cent for units), the median sale price showed moderate growth for both the unit and house markets.

This is an indication that the residential property market in Toowoomba remains generally in equilibrium. In other words, the

forces of supply and demand are relatively balanced.

The key market indicators, such as average days on market and vendor discounting, remain at healthy levels and at similar levels than the Greater Brisbane area.

Houses spent, on average, 72 days on market and vendor discounting was around 5.9 per cent, although this was up from 4.7 per cent 12 months ago (February 2015).

Vendor discounting for units remained below five per cent and still sits at healthy levels, despite the increase in the days on market which was about three months in February 2016.

Stable Rental Market showing Healthy Vacancy Rates

While investors' attraction to the Toowoomba residential market has been softening over recent quarters, the rental market remains stable with a vacancy rate of three per cent, sitting just in the middle of the healthy range. Areas in demand are within close proximity to the CBD, such as Newtown.

Local agents forecast a stable rental market over the next six months. The outlook beyond six to 12 months is promising with a potential increase in demand for workers and employees of the TSRC project.

In the context of the negative gearing debate, local and interstate investors remain cautious about making further investment decisions.



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Toowoomba remains affordable and provides good lifestyle to residents, with access to a reputable education system and health services.

Regional investment and its multiplier effect

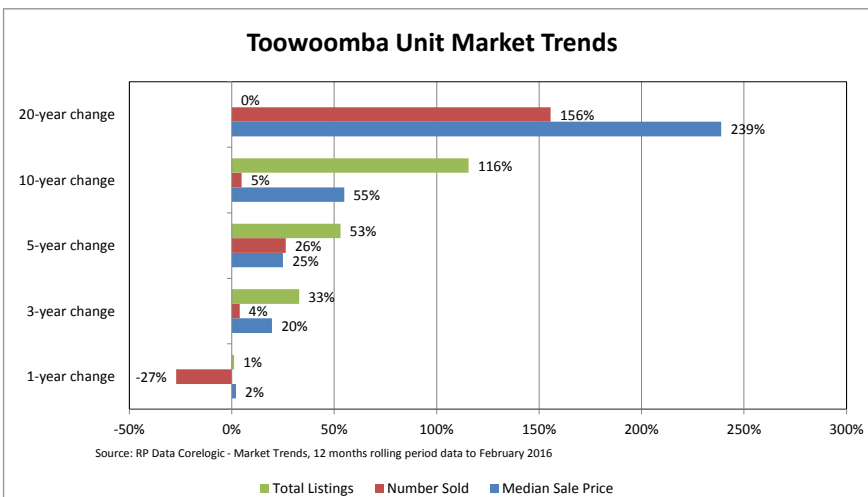
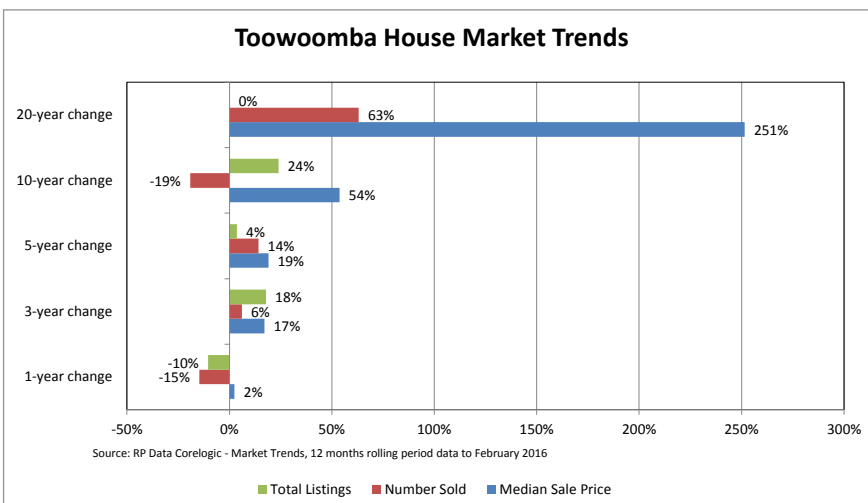
Toowoomba is currently experiencing unprecedented infrastructure investment, which has triggered a positive multiplier effect in the economy. The large pipeline of projects supports solid growth in the residential property market.

Despite the consistent historical growth in the residential property market, Toowoomba remains affordable and provides good lifestyle to residents, with access to a reputable education system and health services. Toowoomba is also looking to expand the commercial, retail and entertainment services in the CBD.

Some of the current and prospective development projects in Toowoomba are:

- TSRC is the largest single Commonwealth road project in Queensland with an indicative value of \$1.6 billion. Expected construction completion is scheduled in 2018 and the private consortium will operate and maintain the infrastructure for 25 years.
- Mort Street connection road upgrade to provide a connection to the TSRC.
- Boundary Street connection road upgrade, which is a three years project required to provide an important connection to the TSCR.
- Ruthven Street streetscape upgrade to extend the look and feel of the CBD.
- A \$21 million O'Mara Road, Charlton upgrade.
- Construction of a \$20 million waste management facility on the western outskirts of the city.
- Redevelopment of Gardentown Shopping Centre and Grand Central Shopping Centre in the CBD, which is a \$500 million project funded by QIC.
- Brisbane West Wellcamp Business Park, which will complement the Wellcamp Airport.
- Toowoomba Railway Parklands Priority Development Area
- Inland Rail Project, which is a Commonwealth project in the pipeline and may develop 1,730km rail connection between Melbourne and Brisbane via central-west NSW and Toowoomba.

With all these development projects in the horizon, Toowoomba is expected to remain a solid regional market in Queensland.





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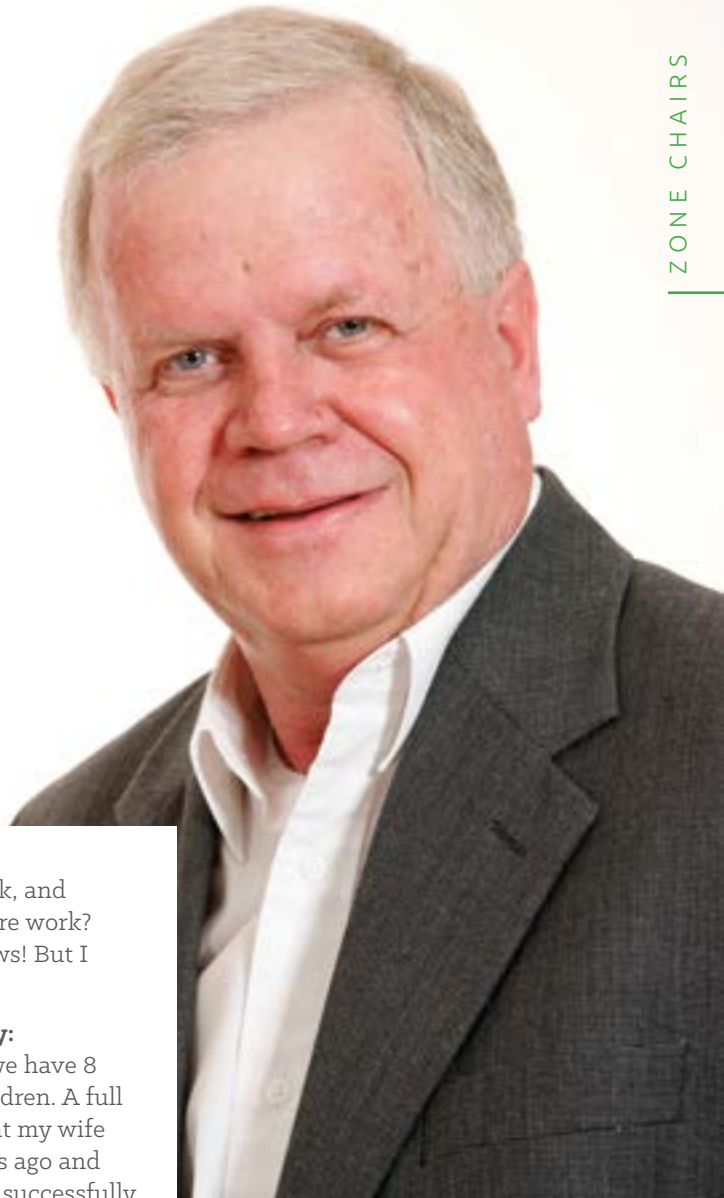
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Zone chair profiles



Name: Stan Crook
Zone: Southern Suburbs/Logan
Agency: Qld Rent Roll Brokers



How long have you been in real estate?
 Since 1971. Too long to think about!

How did you get your start in real estate and what led you to this point?

I lived in the Adelaide Hills and started as a salesperson with a local agent at Stirling. I attended a three-year part-time course to gain my full agent's license and then started my own agency called Village and Country Estates in 1977. In 1980 I moved to Queensland as I had been appointed manager for Elders Ipswich. I became a franchisee for the Ray White group in 1982, operating out of Redbank Plains. In 1988, I was appointed as Franchise Development Manager for LJ Hooker (Qld) and later went on to become Chief Auctioneer. After eight years in this role, I started operating as a real estate agency broker and consultant to the industry, including as a qualified trainer for the REIQ.

In 1997, I started my association with Raine and Horne (Qld), where I began as a senior franchise manager and later moved to portfolio sales and auction services.

Since 2004, I have worked exclusively as a consultant and advisor to the industry and as a real estate agency and rent roll broker.

What professional organisations do you belong to?

The REIQ, of course!

Why did you choose to nominate for a zone chair role?

I have had a long association with the REIQ, as a Fellow, a trainer, and a member, and so continuing as Zone Chair was another way to continue this association. I felt that after so long in real estate it was a good way of giving back to the industry.

What are your hobbies?

My family would say work, and um... work, and um... more work? Oh, and watching the news! But I would say travelling.

Tell us about your family:

Between my wife and I, we have 8 children and 16 grandchildren. A full house! Real estate brought my wife and I together many years ago and we have worked together successfully ever since. As part of our succession plan, our daughter, who is also a licensed agent, recently took over as the director of Qld Rent Roll Brokers.

Do you have any pets and if so, what type and what are their names:

I lost my little mate, Werdy, a year ago. He was a Jack Russell cross and was almost 15 years old. He was such a great companion.

If you could host a dinner party with four famous – dead – celebrities, who would you invite?

Well, dead ones won't eat much, so that would keep the cost down at least! But I would invite my distant relative General George Crook (famous Indian fighter of the 1800s) and his adversary Chief Geronimo, Captain James Cook, and former Australian prime minister Malcolm Fraser. That should make for interesting conversation!

I have had a long association with the REIQ, as a Fellow, a trainer, and a member, and so continuing as Zone Chair was another way to continue this association.

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CPD and zone breakfasts/lunch dates for July 2016

Date	Zone	Breakfast/Lunch	CPD	Venue
13 July	Ipswich	7.30-9.00am	9.15- 11.00am	Brothers League Club
14 July	Fraser Coast	7.30-9.00am	9.15- 11.00am	Hervey Bay RSL
20 July	Western	7.30-9.00am	9.15- 11.00am	The Nook Restaurant

CPD top earners and learners



Name: Cheryl Algie
Agency: PRDnationwide
 Shailer Park

What are your three top reasons why CPD is so important?

In my opinion I think that the CPD is essential to my livelihood. I like to ensure that all documentation is done precisely and it is also important to me that I keep up to date with changes in the industry. These are the three most important things that I glean from the CPD training.

What do you value most about CPD?

Listening and digesting what the professional speakers have to divulge, keeping up with the latest trends.

Do you prefer face-to-face CPD sessions, online webinars or a combination of both?

I prefer the face to face CPD Sessions.





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Realworks for numb skulls

WORDS BY ANITA O'CONNOR, THE FORMS GURU

Do you have a numb skull?

We don't mean one of your co-workers... we're actually referring to your skull.

Is your brain being dulled, laid dormant, numbed to virtual inactivity by the repetitiveness of filling in your Agency Details on every form?

Don't worry – we have an effective treatment. It's called Realworks.

Realworks is your form and agreement creation tool. It treats the monotony of re-writing Agency Details and revitalises your mind so you can go about your daily business of selling and managing property. Realworks gives you back your brain and allows you to be the agent (not the key-pad operator) you want to be.

So how does it work?

Well, the active ingredient is auto-fill. It attacks the numbing at its source – your stored Agency Details (as per REIQ's records) are used to prepopulate your forms.

This is no slapdash placebo – you're in control with Realworks. Principal users are able to check the auto-fill details by clicking the ACCOUNT DETAILS button and then selecting AGENCY DETAILS. If the Agency Details (address, phone number, email, whatever) need changing, it's just a matter of contacting the Realworks team. They will update the details and the next time a form is created, the new Agency Details will appear.

Some users self-inflict monotony into their lives by adding info to their Agency Details (like their company name and ABN). Realworks has a feature which gives these unfortunate souls relief:

1. When you want to create a form from a template, or duplicate one you've created previously, you will be presented with the following dialog...

2. For users who have included additional information, DESELECT the Auto fill my agency/agency details check box – your agency details will then be copied identically instead of being overwritten with the default details.
3. For users who don't want to alter their Agency Details, SELECT the Auto fill my agency/agent details check box.

The key to a happy, healthy and productive lifestyle is diet, exercise and Realworks.

Enjoy!

Anita O'Connor
The Forms Guru

Buyer hits rock bottom – Court finds rocks not part of the land

WORDS BY ANDREW PERSIJN, SENIOR ASSOCIATE, CARTER NEWELL LAWYERS

*A recent decision of the Supreme Court of Queensland, **Tonge v Living Gems Pty Ltd** [2016] QSC 102, provides useful commentary regarding the proper classification of objects on land that are affixed by no more than their weight.*

The facts

Mr Tonge, as trustee for the Barr Trust (**Buyer**), entered into a contract of sale dated 28 November 2014 (**Contract**) to purchase a parcel of land in Beaudesert, Queensland from Living Gems Pty Ltd (**Seller**). The Contract was due to settle on 28 November 2015.

The original date of settlement was extended by agreement to 29 January 2016. While there were a number of requests by the Buyer to further extend the settlement date, no further agreement to extend was ever reached by the parties.

The Contract did not settle on 29 January 2016, due to the Buyer's finance issues. Subsequently, on 8 March 2016, the Seller wrote to the Buyer advising that in light of the Buyer's failure to complete the Contract on 29 January 2016, the Seller had elected to terminate the Contract and the Buyer's deposit had been forfeited.

At the time the Contract was entered into there was approximately 10,000 cubic metres of above-ground rock situated on the property (**the rocks**). However, the rocks were removed from the property sometime before the extended settlement date of 29 January 2016.

The Buyer argued that the removal of the rock constituted a substantial breach of the Contract and therefore the Contract could not be completed on 29 January 2016. In the circumstances, the Buyer argued that the Seller could therefore not terminate the Contract on the basis

of the Buyer's failure to pay the balance of the purchase price on the settlement date.

The Buyer further asserted that it had rejected the Seller's purported termination of the Contract, affirmed the Contract and remained ready, willing and able to perform the Contract. The Buyer lodged a caveat over the land on 8 March 2016.

On 24 March 2016, the Buyer commenced proceedings against the Seller seeking specific performance of the Contract.

Subsequent applications were brought by both parties in which:

1. The Seller sought summary judgement against the Buyer confirming the Contract had been validly terminated and the caveat placed over the property to be removed; and
2. The Buyer wished to amend its claim and the statement of claim to plead that the Contract failed to express the common intention of the parties that the Seller was to provide the rocks to the Buyer, or alternatively, that the Contract should be rectified so that the definition of 'land' included the rocks.

Issues for determination

In determining the Seller's application for summary judgement, the Court had to decide whether the Seller had a right to terminate the Contract, which involved consideration of whether the removal of the rocks constituted a breach of the Contract as alleged by the Buyer.

A special condition in the Contract

provided, amongst other things, that the property was sold 'as is where is' and the Buyer warranted it had had an opportunity to fully inspect the property and satisfy itself in relation to the property including all "improvements" on the property before entering into the Contract.

Another special condition required the Seller to give the Buyer vacant possession of the land on the settlement date.

The Buyer argued that the effect of these clauses was that the Seller was obliged to provide vacant possession of the land, including the rocks, to the Buyer on the settlement date and that these provisions were breached because of the Seller's removal of the rocks.

The Contract noted that there were no included chattels. Therefore the Court had to decide whether the rocks were deemed "improvements" under the Contract definition of that term which meant fixed structures on the land, or alternatively, whether they were fixtures at common law.

Discussion

It was common ground that the rocks had been stockpiled on the land, rather than being a natural part of it, and sat under their own weight. They were therefore not improvements, or fixed structures and the only way the rocks could have been contemplated as being included in the Contract was if they were part of the property or 'fixtures' of the land.

The Court considered two cases on this point. The first was *Deardon v Evans*, which involved large masses of stone which had fallen over time



from cliffs above a field and had become embedded in the soil of the land. In that case Park B found:

“These stones have been in the same state as far back as living memory goes, and are to be considered a portion of the soil, just as much as the gravel which forms a portion of the bed of a river, or as a great part of the soil in different parts of the country, which have been detritus from the neighboring hills; therefore I think they must be considered part of the soil...”

*Mills v Stockman*² involved dross³ discharged from the quarrying of slate on the land. The High Court found it was part of the land with Justice Menzies commenting:

“The rubble slate in the dump upon the land near Goulbourne owned by the appellant Daphne May Mills is, and was at all times material,

*part of the land either because the rubble was not severed from the land or, upon being dumped, it became part of the land again...”*⁴

Justice Kitto found the proper inference was “...the known fact is that the company that worked the quarry and built the dump did not have the requisite intention of permanent severance with respect to anything but so much of the slate as it carried away”.⁵

Likewise Chief Justice Barwick also looked to the intention of the quarrying company, which was to abandon to the land the unwanted and worthless dross of its operations.

In this matter, the Court distinguished the rocks from the dross in *Mills v Stockman*. The evidence was that the rocks had been moved onto the land for storage or stockpiling, not by nature but by

human intervention and never were or became part of the land. As the rocks were not part of the land, they were not included in the Contract.

It followed that the Seller was not in breach of the Contract when it removed the rocks from the land and was not precluded from terminating the Contract because of the Buyer’s breach in failing to complete the Contract on the settlement date.

Decision

The Buyer’s application for leave to amend its claim and statement of claim was dismissed. In dismissing the Buyer’s application, the Court found that there was no evidence from which it could be inferred that there was in fact a common intention of the parties to include that the rocks as part of the land to be sold.

The Court held that the Seller was entitled to summary judgment and the caveat was removed from the property. The Buyer was also ordered to pay the Seller’s costs of and incidental to the application on an indemnity basis pursuant to a clause in the Contract.

Comment

This decision provides useful guidance as to the proper classification of objects on land that are affixed by no more than their weight. Where an object has been purposely moved to the land, and there is no obvious intention that it is to stay there indefinitely, it will likely be considered a chattel and not form part of a contract of sale (unless an express contradictory provision is included in the contract).

Parties to contracts of sale should ensure their intentions are clear so that what is included in the contract is not ambiguous. The most prudent course of action is to expressly include any objects that are to be included in the contract of sale.

¹ (1839) 5 M&W 10.

² (1967) 116 CLR 61.

³ Unwanted material removed from a more valuable mineral.

⁴ *Mills V Stockman* (1967) 116 CLR 61 [78].

⁵ *Ibid* at 76.

A Further Win for Commercial Sales Agent in the Court of Appeal

WORDS BY MICHAEL GAPES, PARTNER, CARTER NEWELL LAWYERS

In the May 2014 Journal, we considered the QCAT Appeal Tribunal's decision of **Airstrike Industrial Pty Ltd v Robertson [2013] QCATA** in relation to a claim for \$200,000 under the former Property Agents and Motor Dealers Claim Fund (PAMD Claim Fund).

Although well out of time, Mr and Mrs Robertson recently filed an application with the Court of Appeal seeking leave to appeal the QCAT Appeal Tribunal's decision. In this article, we consider the Court of Appeal's decision: **Robertson and Anor v Airstrike Industrial Pty Limited [2016] QCA 104**.

As solicitors for the REIQ Professional Indemnity Insurance Scheme (underwritten by QBE Insurance (Australia) Limited and brokered by Aon Risk Solutions), we acted for the successful respondent real estate agency and its sales agent in the Court of Appeal.

The facts

The buyers of a commercial property, Mr and Mrs Robertson (**Robertsons**), alleged that the agency (and its sales agent) had breached s 574 of the *Property Agents and Motor Dealers Act 2014* (Qld) (which was in force at the relevant time) which provides that, *inter alia*, an agent, a licensee or registered employee must not represent in any way to someone else, anything else that is false or misleading in relation to the letting, exchange or sale of property.

A similar prohibition against a licensee or real estate salesperson making false and misleading representations is contained in s 212 of the *Property Occupations Act 2014* (Qld).

The Robertsons were interested in operating a fast food takeaway business. In 2006, they inspected a large industrial estate in Upper Coomera. At the time of their inspection, there was a temporary

access road which provided a means of access to the site. The street, on which the commercial unit which the Robertsons ultimately purchased was located, was shown to be a dead end. The Robertsons alleged that they had expressed concerns to the sales agent about the suitability of access to the site. The sales agent informed them that the current access road was only a temporary arrangement, and that the dead end currently on the street where the unit was located would be extended to connect with a nearby main road.

This information had been obtained from a Decision Notice published by the Gold Coast City Council, together with a project brief prepared by the developers. By 2011, the street had not been connected to a main road and the Robertsons issued a claim under the PAMD Claim Fund. The claim was referred by the Office of Fair Trading (**OFT**) for hearing in the Queensland Civil and Administrative Tribunal (**Tribunal**).

The Tribunal's decision at first instance

In the initial Tribunal hearing, the Robertsons alleged that the sales agent's use of the word "temporary" was misleading in circumstances where it was known that there was no time frame for completion of the connection road between the street and the main road.

In essence, the Tribunal found that the word "temporary" implied that there was a time frame of a short duration, despite the fact it had been accepted by the parties that the sales agent had in fact qualified

his statement that the access road was temporary by thereafter stating that there was no time frame for the connection road to be completed.

In addition to this, the Robertsons also alleged that there had been a misrepresentation by silence. They claimed that the mere statement that the access road was temporary was misleading in circumstances where the statement was not qualified by the following information:

1. There was no funded and scheduled local government plan of development of the connection road; and
2. The connection road might be delayed due to difficulties associated with it traversing private land, including the possibility of having to resume land and negotiate with land holders.

The Tribunal found that the use of the word "temporary" was likely to mislead the Robertsons, who inferred that the access road was only a short term arrangement. In those circumstances, it found that the sales agent should not have used the word "temporary" or at least informed the Robertsons that it was unknown when a connection road would be established and further, that it would require the other developers to finalise their developments beforehand. Accordingly, they were awarded \$200,000 from the PAMD Claim Fund, which the agency and sales agent were ordered to refund.

The QCAT Appeal Tribunal's decision

The QCAT Appeal Tribunal (**Appeal Tribunal**) allowed the appeal in full

on the basis that the Tribunal at first instance had erred in law. The Appeal Tribunal held that the conclusion reached at first instance was unsustainable in circumstances where it had already been established that the sales agent had qualified his statement that the access road was temporary by stating that there was no time frame. It pointed out that there is little difference between the terminology of “unknown” on the one hand and, “no time frame” on the other.

Further, the Appeal Tribunal held that the sales agent had not given the Robertsons any impression as to the length of the time period. In essence, the Appeal Tribunal found that the word “temporary” must be construed in circumstances where the Robertsons knew that the access road was not permanent and where they knew that the connection road would be established in the future, but there was no time frame for this to occur. The Appeal Tribunal said that to find that the sales agent should have understood that the Robertsons apprehended that the word implied a short time period was contrary to the facts of the case.

Therefore, the Appeal Tribunal determined that the sales agent had told the Robertsons all the information he had with respect to the development and that the conclusions of the Tribunal at first instance were not open on the facts. Accordingly, it concluded that the Tribunal had erred at law. On that basis, the decision at first instance was overturned and the agency and sales agent were awarded their costs of the appeal.

Application for leave to appeal

Many months after the Appeal Tribunal’s decision was handed down, the Robertsons filed an application for leave to appeal the decision of the Appeal Tribunal in the Court of Appeal. The application was filed well out of time.

In the leading of judgment written by Justice Jackson, it was found that the Robertsons’ attempt to explain the delay in bringing the application for leave to appeal the Appeal Tribunal’s decision, which should have been filed within 28 days of the

Appeal Tribunal’s decision, had not been adequately explained. Justice Jackson held that, in circumstances of extraordinary delay (as in this instance), the explanation for the delay “must be compelling” and that the explanation was not found to be in the psychologist’s reports tendered in support of the application.

Justice Jackson also considered the merits of the appeal, if leave to appeal were to be granted and, in doing so, he confirmed that the sales agent, in his dealings with the Robertsons concerning the sale of the property, had done nothing but tell them the truth. In this regard, Justice Jackson observed:

“The reasoning of the Appeal Tribunal was founded on the proposition, that cannot be gain said, that any representation made by Mr S [the sales agent] about the likelihood or timing of the connection of Dalton Street to Days Road must be considered in the light of the whole of what he said to the applicants. The applicants’ [the Robertsons’] contention was because Mr S’s statement that the access road from Kristins Lane was ‘temporary’ was misleading because ‘Mr S did not qualify his statement by saying it was unknown when the connection...would occur. The Appeal Tribunal rejected that because of the Appeal Tribunal’s acceptance that Mr S said there was no timeframe for the connection.”

Justice Jackson did not consider that the sales agent’s conduct, in making the truthful and accurate statement to the Robertsons that there was no “time frame” for the connection to the access road, could be considered to have engaged in conduct which might constitute a breach of his obligations under the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001 (Code)* (which was in force at the relevant time), in particular the obligation to undertake his duties honestly, fairly and professionally, as prescribed by clause 7 of the Code, or his obligation to exercise skill, care and diligence in the discharge of his duties, as prescribed in clause 8 of the Code.

Furthermore, Justice Jackson observed:

“Mr S did not owe a duty of care to the applicants. Any duty of care was owed to the respondent as a client. Section 8 of the Code, on its face, did not obviously oblige Mr S to act to protect the interests of the applicants who are not his clients. But even if it did, in my view, it did not necessarily inform the meaning or application of section 574.”

On that basis, Justice Jackson dismissed the Robertsons’ application and ordered them to pay the agency’s and sales agent’s costs.

Conclusion

The Court of Appeal’s decision is a victory for common sense. In this instance, the sales agent did no more than impart information which was known to him in respect to the access road. This information had been obtained from reputable sources, and the sales agent was careful not to put his own interpretation on the information he had acquired, by injecting a temporal element into his discussions with the buyers or expressing an opinion as to the likely completion of the works.

This case demonstrates that sales agents should always adopt a cautious approach and only convey information which is factual and accurate. In addition, sales agents should ensure that they request information and documentation from their seller clients in relation to the features and attributes of a property and that they convey this information to potential buyers without putting their interpretation or “spin” on the information.



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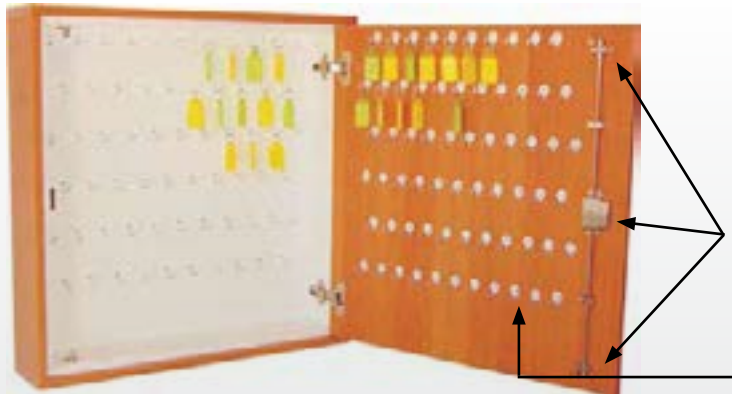
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