



SASB e-Bulletin

Issue SEVEN

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An electronic bulletin from the Settlement Agents Supervisory Board

NEW RULES ON SAFETY SWITCHES

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The Electricity Amendment Regulations 2009 (the Regulations) will come into force on 9 August 2009. The Regulations concern residual current devices (RCDs) otherwise known as safety switches.

The Regulations, which amend the Electricity Regulations 1947, require that from 9 August 2009 the owner of a residential premise must ensure that at least two RCDs are installed in accordance with the 2007 Wiring Rules:

- before the title to the premises is transferred; or
- before the owner enters into a residential tenancy agreement (with someone other than a person who was a tenant) in respect of the premises.

The penalties for non-compliance are:

- a) in the case of an individual – a fine of \$15,000; or
- b) in the case of a body corporate – a fine of \$100,000.

The penalty is imposed on the defaulting person.

With limited exceptions, the obligation also exists in relation to residential premises which are unoccupied.

New homes where the building construction licence was granted after 1 January 2000 already comply with these requirements.

Settlement agents need to be aware that the Joint Form of General Conditions for Sale of Land (the Joint Form) does not specifically contain provisions regarding the installation of RCDs.

Generally, purchasers may not be in a position to delay settlement pending installation of RCDs by the seller unless there is a special condition in the contract relating to RCDs.

The exception is where an authority (an Inspector of which) has issued a notice under 18(2) of the Regulations which may activate 9(a)(1) of the Joint Form.

Acting for buyers

Settlement agents acting for a buyer should advise their client of the new requirements when they receive instructions to act. To protect the interest of their buyer, the seller or their representative should be asked to provide a written statement from:

- an electrical contractor (in a [form](#) approved by the Director of Energy Safety) certifying that two RCDs are correctly installed in accordance with the 2007 Wiring Rules; or
- the relevant local government stating that the building construction licence for the premise was granted after 1 January 2000.

The Settlement Agents Supervisory Board is aware that some local government authorities may not be in a position to provide the building licence information to a buyer's settlement agent even where it is requested via EAS (Electronic Advice of Sale).

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[New licensing fees apply from 1 July 2009](#)

SASB survey of licensed settlement agents Potential amendments to the Settlement Agents legislation

The SASB understands that individual licensed settlement agents should have now received correspondence enclosing a survey relating to potential amendments to the *Settlement Agents Act 1981*, the Settlement Agents Regulations 1982 and the Settlement Agents' Code of Conduct 1982.

The potential amendments to various aspects of the Settlement Agents legislation, as represented in the thirteen survey questions, had been identified by the SASB following the release of its 2008 Discussion Paper and its subsequent consideration of submissions.

Within the context of this review process the SASB, with the support of a Working Party, is now aiming to pursue the most suitable and relevant of these

potential amendments to the point where they can be translated into draft legislative amendment proposals.

Accordingly, the SASB encourages individual licensed settlement agents to express their views about the issues highlighted in the potential amendments by responding to the survey questions and returning it to the SASB by **Friday 24 July 2009**.

To assist in this process, and in addition to the hard copy of the survey that the SASB has recently distributed, an electronic version of the document is also provided. To complete the survey click on the following [link](#) and press submit once you are finished.

New rules on RCDs – continued from page one

Where RCDs are required but are not or will not be in place prior to settlement, the settlement agent acting for the buyer needs to advise the buyer of this fact in writing at the earliest possible time. The buyer should also be advised to seek independent legal advice before settlement.

If the buyer wishes to proceed to settlement where the RCDs are not in place settlement agents should protect themselves by obtaining a written instruction and acknowledgment from their client stating that settlement is to proceed despite the RCDs not being installed at the premises.

The buyer may be credited the cost of installation of the RCDs at settlement or funds can be retained pending installation by the seller. This however may not satisfy the requirements of the Regulations and may leave the seller in breach of the Regulations.

Acting for sellers

Settlement agents acting for the seller should advise the seller of the new requirements when they receive instructions to act. It is recommended that they ask the sellers to provide a written statement from:

- an electrical contractor (in a [form](#) approved by the Director of EnergySafety) certifying that two RCDs are correctly installed in accordance with the 2007 Wiring Rules; or
- the relevant local government stating that the building construction licence for the premise was granted after 1 January 2000.

Where RCDs are required but are not installed the settlement agent acting for the seller needs to advise the seller of the requirement of the Regulations and the penalties. The seller should be advised to seek independent legal advice before settlement.

If the seller wishes to proceed to settlement where the RCDs are not in place settlement agents should protect themselves by obtaining a written instruction and acknowledgment from their client stating that settlement is to proceed despite the RCDs not being installed at the premises.

The buyer may be credited the cost of installation of the RCDs at settlement or funds can be retained pending installation by the seller. This however may not satisfy the requirements of the Regulations and may leave the seller in breach of the

Regulations.

Acting for both parties

A settlement agent acting for both the buyer and seller also needs to be aware of their obligations under rule 7 of the [Settlement Agents' Code of Conduct 1982](#). If a seller refuses to install RCDs prior to settlement, such a position may give rise to a conflict of interest where the agent may have to cease to act for both parties and recommend that the parties seek legal advice.

Rule 7 states:

“Subject to section 46 of the Act and to rule 5 a licensee may sometimes act for both parties. The test to apply is to consider whether in the interest of one he should withhold some information or advice from the other. If he should, then he should inform both clients that he is embarrassed and, subject to the following, should cease to act for both. He may continue to act for one of them in the same matter, however, unless he has received some confidential information from the other which it would be improper to use against him yet which should be used in the interest of the selected client.”

Common property - strata schemes

There are also requirements for RCDs to be installed in switchboards servicing common property in strata schemes. At least one RCD must be installed in each switchboard controlling lighting and socket outlet final sub-circuits by 9 August 2011.

Exceptions to requirements

Regulations 16 and 17 allow for exceptions to the Regulations where the premises are to be demolished within certain timeframes or where the switchboard cannot accommodate two RCDs. Where the switchboard cannot accommodate two RCDs one RCD must be installed.

It is recommended that settlement agents familiarise themselves with the details of the Regulations, available by clicking [here](#).

Further information on the requirement to fit RCDs can be obtained by phoning EnergySafety WA on 9422 5200 or by visiting their [website](#). An example of a form certifying that a premise complies with the Wiring Rules will become available on this [link](#).

Issue six clarification: new Landgate fees

The previous edition of the SASB e-Bulletin included a table of new Landgate fees applicable from **1 July 2009**. The last three rows specifically pertained to email and fax searches and checks submitted by Landgate staff on behalf of customers, and as such were higher in cost than for equivalent searches and checks submitted in person or online.

As these figures are not applicable when using the Landgate Enquiry System (LEN) agents must ensure that they only charge clients for costs incurred, in this instance, the amount of the online fees.

Further information about recouping costs can be found in a previous *Settlement Agents News* article titled, 'A reminder on calculating disbursements' by clicking on this [link](#).