



Supervision Guidelines

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Supervision Guidelines

It's now almost two months since the new 2024 Supervision Guidelines came into effect for NSW property agents. On a daily basis, we are receiving questions from agents, and in particular the person responsible for compliance at agencies, with questions about the implementation of the new Guidelines.

There is some very detailed information on the NSW Fair Trading website in relation to the Guidelines and I would encourage all agents to have a read of this at –

<https://www.fairtrading.nsw.gov.au/media-releases-news-updates/notices/changes-to-supervision-guidelines-and-cpd-2024/raising-professional-standards-event>

The Supervision Guidelines relate directly to how an agency business supervises the functions of all agents working within their business. This includes Assistant Agents, Class 2 licensed agents, Class 1 licensed agents and non-Certificated or

Licensed agents. NSW Fair Trading will determine compliance with the Supervision Guidelines based on information and documentation gathered from the agency when requested by ensuring the Supervision Guidelines and section 32 of the Property and Stock Agents Act 2002 are complied with. When auditing an agency, NSW Fair Trading will request that the licensee produce copies of the required operational procedures documents along with supporting evidence to establish the procedures have been implemented, utilised, updated as required and are complied with.

Many agents have asked if there is a “grace period” before NSW Fair Trading require agents to comply with the new Guidelines. There is no formal grace period. Fair Trading have been quite vocal in their statements that so long as an agency is demonstrating that they are properly supervising their business, then it would be an education process in relation to having documentation reflecting the new Guidelines rather than disciplinary action.

The other most frequent question that we at ACOP are being asked



relates to the need for small agencies with no staff. Fair Trading have stated that operational procedures are required in all agency businesses, but they will be more extensive where employees are engaged, and less so if you are a sole practitioner. This means that every business, regardless of its size must have written procedures that ensure all applicable laws are complied with, which obviously includes the Supervision Guidelines.

Another frequent question relates to every agency having a Licensee-In-Charge “in reserve”. The expectation from NSW Fair Trading is that the business remains supervised at all times, and in reality this means that the Licensee-In-Charge retains responsibility and accountability for the supervision of the whole business.

If for some reason this is not possible due to extended absence or inability to perform these functions, arrangements must be made for an interim Licensee-In-Charge to be appointed. As there is no requirement to be on location at all times, this supervision can occur from anywhere in the world via electronic means.

The next big question relates to the difference between the Supervision Guidelines and operational procedures. Are they the same or are they different documents. The Supervision Guidelines are a set of rules issued by the Strata and Property Services Commissioner and apply to all licensees and agencies. They are required to have documentation demonstrating how they meet the requirements of these Guidelines.

Operational procedures on the other hand, (or a Policy & Procedures Manual by another name) is a document that your agency creates to govern the day-to-day operations of your business and staff. The Supervision Guidelines is not a procedural operational manual.

Another point of clarification relates to the various types of agencies within the property industry in NSW. From traditional residential real estate offices through to commercial agencies, stock and station agencies, business brokers, buyers agents, strata managers and on-site residential managers – the same requirement exists for them all to meet the requirements of the Supervision Guidelines. There will be

differences in implementation of the requirements across different types of businesses, and this is where it is important for each business to tailor their Supervision Guidelines Manual to demonstrate how their specific business is compliant. For example, a strata management business will not need to include information relating to underquoting or price misrepresentation, if all they offer are strata management services. This is the same for buyers agents and any other agents not operating a trust account.

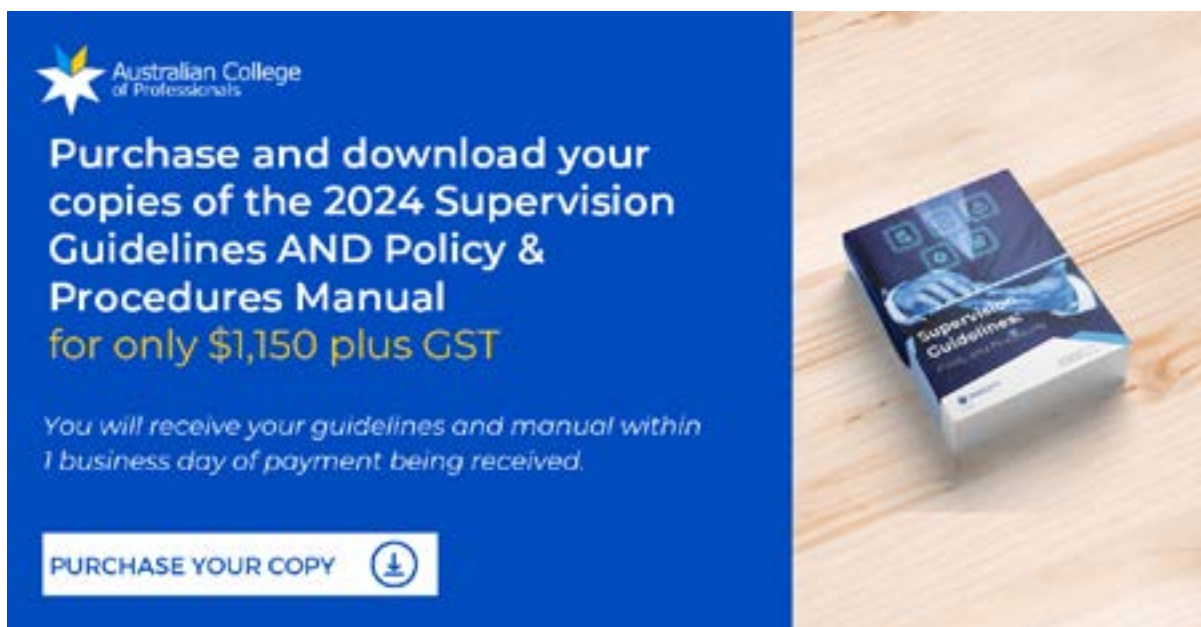
And the final question concerning many agents relates to independent contractors working within an agency business, and if they need to have their own version of Supervision Guidelines. The answer is a clear "YES". An independent contractor is a Licensee-In-Charge and must have their manual that demonstrates that they are compliant with the requirements of the Guidelines. Naturally, their Guidelines would need to reflect those of the main business, in terms of meeting their requirements as a contractor. For example, an independent contractor may utilise the services of the trust account of the main business. They would need to include this information in their

tailored Guidelines documentation noting that as an Independent Contractor that they do not operate a trust account, but utilise the services of the main business, and note the procedures that they follow to meet those requirements.

It is now of utmost importance that all Licensees-In-Charge of an agency business ensure that their Supervision Guidelines documentation is tailored to the specific functions offered by their business. If you have questions about how to achieve this, please speak with us at the College as we have proforma documents which can be purchased and easily tailored to meet the requirements of your agency and demonstrate your compliance with the legislation.

As a sales agent, you need to understand what works best in your local area, the specifics of the property that you are listing, and then assist your vendor to evaluate whether the property would best be offered for sale via auction or via private treaty. As a professional agent, this is where you discuss the advantages and disadvantages with your vendor.


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