

GUIDELINES FOR COMPLIANCE BY ESTATE AGENTS WITH SECTION 142D OF THE RESIDENTIAL TENANCIES ACT 1997 – REPORTING UNREGISTERED ROOMING HOUSES

Introduction

These Guidelines are intended to assist estate agents to comply with the requirements set out in section 142D of the *Residential Tenancies Act 1997*.

Section 142D provides as follows—

Unregistered rooming house

An owner of a building who is not a rooming house owner, or that owner's agent, who has reason to believe that the building is being used as a rooming house but is not registered in accordance with Division 4 of Part 6 of the ***Public Health and Wellbeing Act 2008*** as prescribed accommodation within the meaning of that Act must notify the municipal council of the district in which the building is located.

Penalty: 20 penalty units.

Note

Section 67 of the ***Public Health and Wellbeing Act 2008*** provides that it is an offence for the proprietor of prescribed accommodation within the meaning of that Act not to register that accommodation with the Council.

What is the effect of section 142D?

Section 142D imposes an obligation on an owner of a building, or that owner's agent, to notify the relevant local council if they have reason to believe that—

- (a) the building is being used as a rooming house, and
- (b) the building is not registered with the local council as prescribed accommodation under the *Public Health and Wellbeing Act 2008*.

An agent includes an estate agent and an agent's representative as defined under section 4 of the *Estate Agents Act 1980*.

The obligation to notify arises when the owner or agent forms the reason to believe. The reason to believe may be based on —

- (a) supporting evidence uncovered during an inspection of the building or otherwise in the ordinary course of an owner or agent's duties; or

- (b) information from—
- neighbours,
 - current or past residents of the building,
 - community legal centres or tenancy advocacy services; or
 - other bodies such as Consumer Affairs Victoria, other government agencies or local councils.

Please note that section 142D does not automatically place any additional requirements on owners or agents to conduct further inspections of their properties. The requirement is to notify the local council if they have reason to believe that the building is being used as a rooming house, but is not registered as required.

What does “reason to believe” mean?

A firm opinion or conclusion based on objective facts or evidence in the circumstances of the case, and ***not just a suspicion.***

If an agent observes evidence consistent with occupation of the building by a number of people, rather than the individual, couple or family otherwise identified as lessees, this may provide grounds for a reasonable belief. Examples of this kind of evidence are set out below.

What constitutes evidence of rooming house activity?

There are certain physical signs that may indicate that the building is being used as a rooming house. These may include:

- a large number of residents using the building;
- the interior of the building has been changed in a manner consistent with multiple occupation and not envisaged by the lease (e.g. informal, ad hoc building works such as plywood dividing a room into two)
- locks or numbers on bedroom doors
- evidence of a high level of usage of facilities such as kitchens and toilets supported by high water, electricity and gas bills for the building
- a high level of usage of facilities that seem to be inconsistent with the usage envisaged by the lease
- high levels of rubbish and recyclables
- multiple vehicles parked on or off the street
- lots of mail addressed to different people
- multiple individual toiletries stored in bedrooms rather than bathroom

- Lessee not living on site
- No communal area
- Cooking appliances and fridges in bedrooms
- Televisions, kettles, games consoles etc. in bedrooms but not in communal areas
- Advertisements of rooms to let
- Notices on display (e.g. of where to pay rent, to keep areas clean, etc.)
- Caravans or sheds converted into bedrooms
- Many mattresses on the premises.

In the circumstances of a suspicion, is there a duty to inquire further?

Under the **Estate Agents (Professional Conduct) Regulations 2008**, an agent has a duty to have a working knowledge of any laws relevant to their work as an agent, (including laws about the safety and health of the building); must act in the best interests of their principal; and must not engage in conduct that is unprofessional or detrimental to the reputation or interests of the estate agency industry.

An agent must take steps to ensure compliance with the laws that relate to the administration of the premises on behalf of their principal,

Where an agent has a suspicion, they have a duty to seek further information or to look for further evidence that could lead to a reason to believe that the building is being used as a rooming house.

How can an owner or the owner's agent ascertain whether the building is a registered rooming house?

If an agent has registered a rooming house themselves; seen a record to indicate that the rooming house has been registered; or received an assurance from a landlord that a rooming house has been registered then the agent should keep a record of this information.

Where an estate agent is uncertain, some councils will respond to a direct enquiry about a specific property. Other councils do not divulge this information. In this case, it would be safest for the purposes of Section 142D to assume that the rooming house has not been registered and proceed to notify the council.

How must notification take place?

Written notification can be in the form of a letter or an email to the local council, setting out that the agent has reason to believe that the building is being used as a rooming house and that it is unregistered.

The written notification can set out the facts or evidence or information on which the reason to believe is based, but to avoid issues with privacy, the notification should not identify any specific person who has provided information.

An agent must keep a copy of their letter or email, and should request a written acknowledgement from the local council, which they should also keep.

What will guide enforcement by Consumer Affairs Victoria?

If an investigation demonstrates that an agent failed to notify as required, the enforcement by Consumer Affairs Victoria will be guided by its general enforcement policy.