

ENFORCEABLE UNDERTAKING

Insurance Act 1973

Section 126

These enforceable undertakings (**undertakings**) are given by:

Realcover Insurances Pty Ltd (ABN 72 103 975 355)

of Real Estate Institute House, 30-32 Wentworth Avenue, Sydney, New South Wales, 2000

(Realcover)

and

The Real Estate Institute of New South Wales Limited (ABN 51 000 012 457)

of Real Estate Institute House, 30-32 Wentworth Avenue, Sydney, New South Wales 2000

(REINSW)

AND ARE ACCEPTED BY:

Australian Prudential Regulation Authority

of Level 12, 1 Martin Place, Sydney, New South Wales 2000

(APRA)

UNDER SECTION 126 of the *Insurance Act 1973* (the **Act**).

A copy of section 126 of the Act is at Schedule 1 to these undertakings.

RECITALS

- A. Realcover is authorised under the Act to carry on insurance business in Australia providing professional indemnity and employment practices liability insurance to real estate agents.
- B. REINSW is the sole shareholder of Realcover. REINSW is the industry body for real estate agents and property professionals in NSW that represents agents across the state.
- C. APRA has the functions and powers set out in the *Australian Prudential Regulation Authority Act 1998* and the Act.
- D. Pursuant to the Act, APRA has the general administration of the Act. The main object of the Act is to protect the interests of policyholders and prospective policyholders

under insurance policies (issued by general insurer and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry.

- E. APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under the Act in accordance with section 126 of the Act.
- F. The Federal Court may make an order as outlined in subsection 126(4) of the Act if the Federal Court is satisfied that Realcover and/or the REINSW have breached a term of the undertaking.
- G. In light of the matters referred to in Part 1, Realcover and REINSW have given the undertakings set out in Part 2.

PART 1 – BACKGROUND

1. On 29 April 2008, the REINSW provided an undertaking to APRA that it would provide Realcover with additional capital, if required, to ensure Realcover can operate in an appropriate manner and to allow it to comply with Australian insurance regulations.
2. On 23 November 2016, the REINSW resolved to provide Realcover with sufficient additional capital as required.
3. On 20 February 2017, the REINSW provided written notification to Realcover that it would provide Realcover with an enforceable undertaking to provide additional capital to Realcover as and if required by Realcover.
4. As at the date of this Enforceable Undertaking, Realcover, the REINSW and APRA agree that Realcover should commence the run-off of its insurance portfolio from 30 June 2017.
5. The REINSW, Realcover and APRA consider it necessary and appropriate for Realcover's capital position to be supported by the REINSW, through this undertaking, while Realcover remains a general insurer authorised under the Act and until the completion by Realcover of its insurance portfolio run-off, or until Realcover is able to satisfy APRA that it has no liabilities in relation to its insurance business in Australia.

PART 2 – UNDERTAKINGS

6. Realcover undertakes to:
 - 6.1. comply with APRA's prudential standards as required by section 35 of the Act;
 - 6.2. maintain its capital base to comply with its Prescribed Capital Requirement (PCR)¹ until the conclusion of run-off of its insurance portfolio, or until Realcover is able to satisfy APRA that it has no liabilities in relation to its insurance business in Australia; and
 - 6.3. notify APRA in writing of its PCR and capital base at least once a month until the conclusion of run-off, or until Realcover is able to satisfy APRA that it has no liabilities in relation to its insurance business in Australia, or as otherwise advised in writing by APRA.
7. REINSW undertakes to:
 - 7.1. provide financial information as requested in writing by APRA; and
 - 7.2. provide Realcover with additional capital as and when requested by notice in writing from Realcover; and/or
 - 7.3. provide Realcover with additional capital, within 15 business days of receipt of a notice in writing from APRA to Realcover and REINSW, to enable Realcover to maintain its capital base to comply with its PCR until the conclusion of the run-off of its insurance portfolio or until Realcover is able to satisfy APRA that it has no liabilities in relation to its insurance business in Australia.
8. Both Realcover and REINSW undertake to inform APRA in writing as soon as REINSW has provided additional capital to Realcover, as required under clauses 7.2 and/or 7.3.
9. APRA has the power under section 126 of the Act to accept undertakings from Realcover and the REINSW and accepts these undertakings.

ACKNOWLEDGEMENT

10. This Enforceable Undertaking comes into effect at the date of the execution of this Enforceable Undertaking by APRA.

¹ As defined in APRA's *Prudential Standard GPS 110 Capital Adequacy* (GPS 110).

11. This Enforceable Undertaking is given by Realcover and REINSW and is accepted by APRA pursuant to section 126 of the Act, which also addresses, among other matters, the variation, breach and enforcement of this Enforceable Undertaking.
12. Realcover acknowledges that it has the approval of REINSW to provide this Enforceable Undertaking.
13. The REINSW and Realcover acknowledge that this Enforceable Undertaking is given by the REINSW and Realcover voluntarily and that the REINSW and Realcover have obtained legal advice in relation to their obligations under, and the effect of, this Enforceable Undertaking.
14. This Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from any other conduct.
15. This Enforceable Undertaking does not affect APRA's power to take any other action necessary whether arising from the circumstances set out in this Enforceable Undertaking or any other circumstances or conduct of Realcover.
16. The REINSW and Realcover acknowledge that APRA:
 - 16.1 may from time to time refer publicly to this Enforceable Undertaking; and/or
 - 16.2 may make this Enforceable Undertaking public and may publish it on APRA's website at www.apra.gov.au; and/or
 - 16.3 may issue a media release on the Enforceable Undertaking referring to its terms and the reasons why APRA accepted the Enforceable Undertaking.
17. The REINSW and Realcover acknowledges that if any part of this Enforceable Undertaking is held invalid that such part shall be severed from this Enforceable Undertaking and the remainder of this Enforceable Undertaking will continue to be valid and enforceable.
18. The references to provisions of Commonwealth Acts of Parliament in this Enforceable Undertaking shall include references to those provisions as amended from time to time and in the event of a repeal of any of them, any equivalent provision from time to time.
19. For the purposes of this Enforceable Undertaking, any correspondence may be sent to the CEO of REINSW at 30-32 Wentworth Avenue Sydney NSW 2000 and/or tmckibbin@reinsw.com.au and to APRA's office at Level 12, 1 Martin Place, Sydney, NSW 2000 and/or to the email of the General Manager of the Central Region, Specialised Institutions Division of APRA.

20. This Enforceable Undertaking may be varied at any time pursuant to subsection 126(2) of the Act. Any such variation must be made in writing by the parties and authorised by an APRA General Manager or above.

EXECUTION

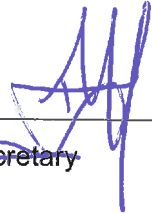
Executed by **Realcover Insurances Pty Ltd**)
ABN 72 103 975 355 in accordance with)
section 127 *Corporations Act 2001 (Cth)*:)



Director

TONY BRASIER.

Print Name

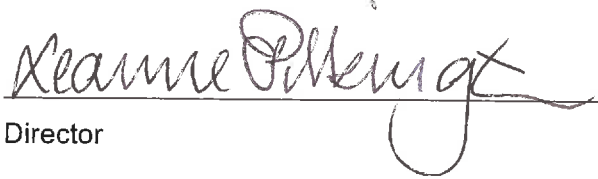


Director/Secretary

TIMOTHY MCKIBBIN

Print Name

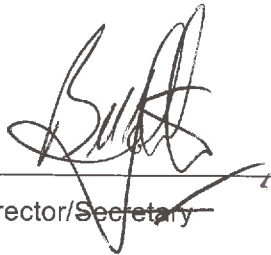
Executed by **Real Estate Institute of New South**)
Wales Limited (ABN 51 000 012 457) in)
accordance with section 127 *Corporations Act*
2001 (Cth):)



Director

LEANNE PILKINGTON

Print Name



Director/Secretary

BARRY JOHNSTON

Print Name

Accepted by a delegate of the)
Australian Prudential Regulation Authority)

JENNIFER BALDING

Print Name

ACTING GENERAL MANAGER 21st April 2017

Position

In the presence of

ALEX GOSMAN

Print Name

Dated: 11/4/2017



SCHEDULE 1

INSURANCE ACT 1973

SECTION 126

Acceptance and enforcement of undertakings

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with APRA's consent.
- (3) If APRA considers that the person who gave the undertaking has breached any of its terms, APRA may apply to the Federal Court for an order under subsection (4).
- (4) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Federal Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Federal Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Federal Court considers appropriate.

