

OFFICE SPACES AND COMMERCIAL BUILDING DISCLOSURE OBLIGATIONS FOR REAL ESTATE AGENTS

Getting the energy rating right in advertisements



Background

Under the [Commercial Building Disclosure \(CBD\) Program](#) a building or area of a building is disclosure affected if:

- at least 75% of the space in a building or area of a building is used or capable of being used for administrative, clerical, professional, or similar information based (office) activities
- this office space is at least 1000 m².

Under the [Building Energy Efficiency Disclosure Act 2010](#) (BEED Act), entities and persons offering to sell, lease, or sublease such office space are required to provide energy efficiency information to prospective buyers and tenants.

THIS INCLUDES REAL ESTATE AGENTS

Providing the energy efficiency information

The energy efficiency information is provided via:

(1) Building Energy Efficiency Certificates (BEECs) which contain a:

- NABERS Energy rating for the building
- Tenancy Lighting Energy Efficiency Assessment (TLA) for the building or area of the building.

BEECs must be registered before the office space is offered for sale, lease, or sublease.

(2) advertisements for the office space which must contain:

- the current NABERS Energy rating expressed in a manner determined by legislative instrument.

Real estate agent obligations

Real estate agents have obligations under the BEED Act and **must not** advertise or continue to advertise office space:

- before a BEEC has been registered
- unless the current NABERS Energy rating is expressed in the advertisement in the correct manner by:
 - using a whole number or one half of a whole number, from 0 to 6, worked out for the building under the NABERS Energy rating rules
 - adding the words ‘-star NABERS Energy rating’ after the number, eg:
 - **4.5-star NABERS Energy rating**
 - **3-star NABERS Energy rating**
 - **0-star NABERS Energy rating**

Failure to comply may result in action being taken under the BEED Act.

Exceptions

There are exceptions for some buildings:

- new buildings
- buildings where a Certificate of Occupancy (or equivalent) has not yet been issued or was issued less than two years earlier
- buildings which had a major refurbishment for which a Certificate of Occupancy (or equivalent) was issued less than two years earlier
 - includes upgraded HVAC, lifts, lighting, and water services for whole building.
- strata-titled buildings.

Exceptions

... and exceptions for some transactions (even if the office space is disclosure affected):

- the sale of a building through the sale of shares or units or the sale of a partial interest in a building
- leases and subleases of 12 months or less (including any option to extend), in accordance with section 11 of the BEED Act.

The guidance note [Treatment of Certain Property Transactions](#) provides further information.

Exemptions

A person may also apply for a building or an area of a building to be exempt from the operation of sections 11, 12 or 15 of the BEED Act where:

- the building or the area of the building is used for police or security operations
- the building or the area is non-assessable
- in circumstances prescribed by regulation.

It must be remembered the building or the area of the building **cannot be advertised until the exemption is granted** by the CBD Program.

Don't leave it too late to get a BEEC or exemption!

If the building does not have a NABERS Energy rating or the building or office space does not have a TLA, please allow up to eight weeks for the assessments to be performed and processed.

Allow additional time for the Issuing Authority to process the BEEC application, which is usually within 28 days of receiving the completed application form. The same applies for an exemption application.

If your client asks you to advertise the office space before the BEEC has been registered or the exemption has been granted ...

STOP!! DO NOT PROCEED!!

If you do, you are contravening the BEED Act and both you and your client may be subject to heavy penalties.

No BEEC = No advertising

John the owner:

“The assessor has submitted the application for a BEEC”

Steve the agent:

“So I can proceed with advertising?”

John:

“Yep, that’ll be fine.”

WRONG!

Advertising should not commence until the BEEC has been registered.



Smith-Jones Real Estate	
Property Summary	
Address:	12-18 North St, City
Category:	Offices
Contract type:	For lease
Floor area:	4,500m ²
Energy efficiency rating:	0-star NABERS Energy rating
Parking:	Secure basement parking
Listing agent:	John Smith 00 1234 5678



Smith-Jones Real Estate	
Property Summary	
Address:	12-18 North St, City
Category:	Offices
Contract type:	For lease
Floor area:	4,500m ²
Energy efficiency rating:	Pending ←
Parking:	Secure basement parking
Listing agent:	John Smith 00 1234 5678

Owners and lessors who proceed without disclosure risk fine or prosecution.

Text size

John the owner:

“The ad has lots of information. Can the energy rating be made smaller?”

Steve the agent:

“Good idea. I’ll get our designer to reduce its size.”

WRONG!

The NABERS Energy rating must not be smaller than the majority of the text



FOR SALE Smith-Jones Real Estate

Let’s do a deal

- Up to 5,500m²
- Flexible fitted out space
- Basement car parking
- 2.5-star NABERS Energy rating

PHONE 00 1234 5678
www.example1.com.au
Ground floor, 1-2 Example St, Example City



FOR SALE Smith-Jones Real Estate

Let’s do a deal

- Up to 5,500m²
- Flexible fitted out space
- Basement car parking

2.5-star NABERS Energy rating

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www.example1.com.au
Ground floor, 1-2 Example St, Example City

Rating must not be smaller than the majority of the text.

NABERS Commitment Agreement

Steve the agent:

“The building can’t get an energy rating and is exempt, but we need to show something.”

John the owner:

“The consultant said that once I fix the metering, it could get over 4 stars!”

Steve:

“We’ll write ... Targeting 4.5 NABERS.”

WRONG!

The NABERS Commitment Agreement rating by itself does not meet CBD obligations.

- But it can be used with a NABERS Energy rating shown on a current BEEC



FOR SALE Smith-Jones Real Estate

12-18 North St, City

- 2,000m²
- Parking available
- 2.5-star NABERS Energy rating
- Commitment agreement of 4.5-star NABERS Energy rating

PHONE 00 1234 5678
www.example1.com.au
Ground floor, 1-2 Example St, Example City



FOR SALE Smith-Jones Real Estate

12-18 North St, City

- 2,000m²
- Parking available
- Commitment agreement of 4.5-star NABERS Energy rating

PHONE 00 1234 5678
www.example1.com.au
Ground floor, 1-2 Example St, Example City

Displaying a NABERS Commitment agreement rating only does not meet CBD legislation.

Building banners

Steve the agent:

“The sign writer needs the building banner approved asap.”

John the owner:

“The CBD assessor is still doing the assessment.”

Steve:

“Don’t worry, we’ll put it up without the energy rating and add it later.”


WRONG!

All banners on a building must include the NABERS Energy rating.



Incorrect NABERS Energy ratings

Examples of incorrect information found in advertisements:

- 4.5 star NABERS
- NABERS 4 1/2 star rating
- NABERS four and a half star
- Targeting NABERS 4.5 star
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What we want to see is:

4.5-star NABERS Energy rating

Enforcement responses

Failure to comply with these obligations may result in action being taken under the BEED Act.

Both the building owner and/or real estate agent may be subject to penalties for each contravention of the BEED Act. For example, if the advertisement does not include a current NABERS Energy rating expressed in the correct manner, the penalty can be up to 1000 penalty units.

With penalty units currently set at \$313, this equates to civil penalties of up to \$313,000 for the first day and \$31,300 for each subsequent day of non-compliance.

Alternatively, the Secretary of the Department can give an infringement notice of up to \$31,300 for the first day and \$3,130 for each subsequent day of noncompliance.

Next steps and further information

Find out more about your obligations at the link [For real estate agents](#) and refer your colleagues to this page.

Tell your clients today about the CBD program – refer them to the [Overview of the Program](#). Don't wait until June!

A final reminder... CBD currently applies to buildings or office space 1000m² or more being offered for sale, lease, or sub-lease – but note:

For further information, enquiries or feedback please email info@cbd.gov.au or call 1800 020 131.

