

2023  
Learner Guide v2.0

# NZ Certificate in Real Estate (Salesperson) (Level 4)

## Module 1 – Unit Standard 26149

Demonstrate knowledge of licensing and code of professional conduct under the Real Estate Agents Act 2008

(Level 4, Credits 4)

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# The Real Estate Agents Act 2008

## Purpose

The primary purpose of the Real Estate Agents Act 2008 is to promote consumer protection and consumer confidence.

### Real Estate Agents Act 2008

The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.

The Act achieves its purpose by—

- (a) regulating agents, branch managers, and salespersons
- (b) raising industry standards
- (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

All licensees working in the real estate industry must comply with the [Real Estate Agents Act 2008](#) and these four sets of Regulations

- Real Estate Agents (Audit) Regulations 2009
- Real Estate Agents (Licensing) Regulations 2009
- Real Estate Agents (Complaints and Discipline) Regulations 2009
- Real Estate Agents (Duties of Licensees) Regulations 2009.
- And all other relevant legislation. This includes legislation such as the Fair Trading Act 1986, the Contract and Commercial Law Act 2017 and all other relevant legislation.

Section 14 of The Real Estate Agent Act 2008 sets out the Authority's role regarding practice rules. Under this Section the Authority is responsible for making the rules and notifying everyone by giving notice in the Gazette. (The New Zealand Gazette is the official newspaper of the Government of New Zealand and is produced by the New Zealand Gazette Office at the Department of Internal Affairs).

## Approved Guides

The Real Estate Authority has two guides that provide important and accurate information about the transaction process for buyers and sellers of residential property. These requirements are in accordance with sections 127 and 133 of the Real Estate Agents Act. These guides are the:

1. [NZ Residential Property Agency Agreement Guide](#)
2. [NZ Residential Property Sale and Purchase Agreement Guide](#)

Licensees must give the Residential Property Agency Agreement Approved Guide to a client seller before they sign an agency agreement for the sale of residential property and obtain a signed acknowledgement that the client seller has received the guides.

**The REA Act - Section 127** states that the agent must not enter into an agency agreement with a person for the sale of residential property unless they:

- Provide and explain the approved guide for Agency Agreements to the client before they sign the agency agreement.
- Receive a signed acknowledgement from the person that they received the approved guide.

### Real Estate Agents Act 2008

#### 127 Approved guides to be provided before agency agreement for residential property signed.

- (1) An agent must not enter into an agency agreement with a person for the sale of residential property unless the agent or a licensee on the agent's behalf—
  - (a) has provided the person with a copy of the approved guide before the agreement is signed by or on behalf of the person; and
  - (b) has received a signed acknowledgment from the person that the person has been given the approved guide.
- (2) In this section—

approved guide means a guide that—

  - (a) is about the sale of residential property;
  - (b) has been approved by the Authority for the purposes of this section.

residential property does not include any property that—

  - (a) has been developed with other properties in a continuous area; and
  - (b) is proposed to be sold or otherwise disposed of by a vendor who also proposes to sell or otherwise dispose of, or who has sold or otherwise disposed of, some or all those other properties.
- (3) A contravention of this section does not affect the validity of the agency agreement.

The REA Act - Section 133 states that the agent must not enter into a Sale and Purchase Agreement with a person for the sale of residential property unless they have:

- Provide the client and customer with a copy of the approved guide for the Sale and Purchase Agreement Guide before they sign the sale and purchase agreement.
- Receive a signed acknowledgement from each party that they have received the approved guide.

### Real Estate Agents Act 2008

#### 133 Approved guides to be provided when contractual document provided:

- (1) An agent must ensure that subsection (2) is complied with before a person signs a contractual document if the contractual document—
  - (a) relates to the proposed sale of a residential property in respect of which the agent is carrying out real estate work; and
  - (b) was provided to the person by the agent or by a licensee on behalf of the agent.
- (2) The agent or a licensee on the agent's behalf must have—
  - (a) provided the person with a copy of the approved guide; and
  - (b) received a signed acknowledgment from the person that the person has been given the approved guide.
- (3) In this section—
  - (a) approved guide means a guide that—
    - (a) is about the sale of residential property;
    - (b) has been approved by the Authority for the purposes of this section.
- (4) A contravention of this section does not affect the validity of any contract.

For more information visit the REA website [here](#)

# Licensing

## Introduction

Section 6 of the Real Estate Agents Act 2008 requires that all people who carry out 'real estate agency work' must have a current licence (under the Real Estate Agents Act 2008) unless they are exempt. There are three types of licence and if they meet the criteria, people can be licensed as a:

- Agent - Section 48.
- Branch manager - Section 49.
- Salesperson – Section 49.

Companies that meet the criteria can also hold an agent licence.

- Regulation 12 in The Real Estate Agents (Licensing) Regulations 2009 outlines the prescribed qualifications for the different license types.
- To apply to be licensed as a salesperson, you will need to have successfully completed the New Zealand Certificate in Real Estate Level 4 or the National Certificate in Real Estate Level 4.
- To apply to be licensed as a branch manager, you will need to have successfully completed the New Zealand Certificate in Real Estate Level 5 or the National Certificate in Real Estate Level 5, version 3 or later.
- To apply to be licensed as an individual agent, you will need to have successfully completed the New Zealand Diploma in Business (Real Estate) Level 6 or the National Diploma in Real Estate Level 5 (Agent) awarded after 1 July 2010.

Applications are made to the Real Estate Authority (REA).



Note: a 'required qualifications' exemption applies for individuals holding a recognised property degree

## People who are exempt from needing a licence

The following people do not need to be licensed under the Real Estate Agents Act to carry out real estate agency work:

- Lawyers and conveyancing practitioners (as defined by the Lawyers and Conveyancers Act).
- Licensed auctioneers (registered under the Auctioneers Act 2013).

## Property degrees

The [Real Estate Agents Licensing Regulations 2009](#) allows people holding a recognised property degree to apply for a licence without needing to complete further study.

If an applicant who has not held a licence before is applying for a real estate licence under the 'required qualifications' exemption, they need to complete a further Assessment related to the Sale and Purchase Agreement.

## Fit and proper person

The requirement to be a 'fit and proper' person applies in addition to the requirements under section 37 of the Real Estate Agents Act.

This means that a person may not be prohibited from holding a licence under [Section 37](#) but may still not be considered a 'fit and proper' person by the REA registrar if another issue is raised by evidence.

A person may not be allowed to hold a licence for reasons listed in Section 37 of the Real Estate Agents Act 2008. i.e. The following persons are not eligible to hold a licence:

- a person who has been convicted, whether in New Zealand or another country, of a crime involving dishonesty (or of a crime that, if committed in New Zealand, would be a crime involving dishonesty) within the 10 years preceding the application for a licence:
- a person who has been convicted of an offence under sections 12A, 14, 17 to 22, or 24 of the Fair Trading Act 1986, within the 5 years preceding the application for a licence:
- a person whose licence or certificate of approval has been cancelled within the preceding 5 years or whose licence is suspended at the time of application under the Real Estate Agents Act 1976:
- a person whose licence has, within the preceding 5 years, been cancelled under section 54(c) to (h); or whose licence is currently suspended under section 110(2)(c) or 115:
- a person subject to an order made, or a notice given, under the law of a country, State, or territory outside New Zealand, within the preceding 5 years who is prohibited from acting as an agent, branch manager, or salesperson (or equivalent) in that country, State, or territory, unless the person satisfies the Authority that he or she is a fit and proper person to hold a licence:
- a person who is an officer of a licensee company, a chief executive officer of a licensee company, or a branch manager and who has been disqualified from holding a licence or whose licence has been suspended under the Real Estate Agents Act 1976:



- a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:
- a company, or other corporate entity or partnership, where a person concerned in its management is disqualified from being licensed in his or her own right under paragraph (a):
- a person described in section 7(1) (which relates to the exemption of lawyers and conveyancers from this Act) who is subject to the provisions of the Lawyers and Conveyancers Act 2006.
- A person is not eligible to hold an agent's licence if he or she is an undischarged bankrupt or is subject to subpart 4 of Part 5 of the Insolvency Act 2006.

Any criminal conviction not already brought to REA's attention, which has not been 'clean slated' under the [Criminal Records \(Clean Slate\) Act 2004](#). For example, any excess breath alcohol conviction or traffic offence that resulted in a conviction.

- Any pending criminal charges (in New Zealand or overseas).
- Any unsatisfied judgements in any court.
- Any adverse findings by a court in civil proceedings.
- Any significant financial issues, such as bankruptcy or liquidation/receivership of a company of which the person is a director.
- Any disciplinary action taken by another regulatory or professional body in New Zealand or overseas.
- The information provided in this section is a summary of information from the Real Estate Authority (n.d.-a).

For more information click [here](#).

## Salespersons licence

To become a real estate licensee, and to renew an existing licence, in accordance with the Real Estate Agents Act 2008, you must meet the following requirements:

Under Section 36 you may be licensed as a salesperson if you are

- 18 years or older
- are not prohibited from holding a licence under Section 37
- are a fit and property person to hold a licence.
- Have the prescribed qualification - the NZ or National Certificate in Real Estate (Salesperson) (Level 4).

When you apply for your Licence and the REA receive your application, they will advertise that you are applying for a licence. (Section 39)

- They advertise the details of the applicant on their website for 14 days.
- Once you get your Licence, you should always keep a copy of it on you.
- You are required by the Real Estate Agents Act 2008 to make your licence is available for inspection if requested. It can be in any form.
- It is your responsibility to renew your Licence every 12 months on your renewal date which is the same as your issue date.
- You are also required to complete you continuing education each year.

A current salesperson's licence allows you to carry out real estate agency work for, or on behalf of, an agent (as an employee or contractor, but not on your own account).

You must have a current salesperson's licence and be supervised by a currently licensed agent or currently licensed branch manager when carrying out real estate agency work.



**Note:** You must apply for a licence within three years from the date you complete your qualification.

Residential property management work sits outside the Real Estate Agents Act and does not count as real estate agency work.

## **Restriction on work of a newly licensed salesperson**

New salespersons with less than six months' real estate agency experience cannot prepare or draft sale and purchase agreements, negotiate or advise clients or customers about their legal rights and obligations that are incidental to the preparation of those agreements (this is prohibited under section 36(2A) of the Lawyers and Conveyancers Act 2006).

However, depending on the agency's policies and procedures, the licensee may carry out all other duties, such as appraisals, listings, and the marketing of properties.

### **Real Estate Agents Act 2008**

#### **36 Exceptions to sections 32, 33 (extract)**

- (2) Sections 32, 33, and 35 do not prevent any person who holds a current licence under the Real Estate Agents Act 2008
- (a) from preparing any agreement for sale and purchase of land or any interest in land or of the goodwill of a business or of chattels; or

(b) from giving advice about legal rights and obligations that is incidental to the preparing of an agreement of the kind referred to in paragraph (a)

(2A) However, subsection (2) does not apply to a person who, under the Real Estate Agents act 2008, holds a licence as a salesperson unless the person has had at least 6 months experience as a licensee.

Click [here](#) for the full Section 36 of The Lawyers and Conveyancers Act 2006

Under Section 36 (2A) of the Lawyers and Conveyancers Act 2006 a real estate licensee in their first six months of being licensed cannot draft, negotiate, or give conveyancing advice in relation to agreements for sale and purchase or lease of real estate, or the goodwill of a business.

A licensee:

- Cannot carry out any conveyancing work until they have six months' experience.
- Cannot prepare, negotiate, or offer advice on a sale and purchase agreement until they have six months' experience.
- Must be supervised and managed at all times.
- Can carry out real estate work for or on behalf of an Agent.
- Can sell or to offer to sell land by auction without having to be registered as an auctioneer.
- Is responsible for their continuing education each year.
- Is responsible to keep up with all changes in the real estate industry.

### Real Estate Agents Act 2008

#### Section 49 Branch manager's or salesperson's licence

- (1) A branch manager's licence or a salesperson's licence authorises the licensee to carry out real estate agency work for or on behalf of an agent.
- (2) The licence also authorises the licensee to sell or to offer to sell, on behalf of the agent, any land by auction, and operates as an exemption from the requirement in the [Auctioneers Act 2013](#) to be registered as an auctioneer.
- (3) However, every licensee who conducts an auction of land must comply with the rules about the conduct of auctions set out in [sections 36Y to 36ZE](#) (but not the rule in [section 36ZF](#)) of the Fair Trading Act 1986.

## Branch manager's licence

A Branch Manager must be qualified and have three years' experience in real estate work within the last ten years and have successfully completed the:

- National Certificate in Real Estate (Branch Manager) (Level 5) Version 3 or later or
- New Zealand Certificate in Real Estate Level 5 or
- Graduate Diploma in Business Studies (Real Estate) conferred by Massey University after January 1992

A current branch manager's licence allows you to carry out real estate agency work for, or on behalf of, an agent (as an employee or contractor, but not on your own account). It also allows you to supervise currently licensed salespersons who are carrying out real estate agency work if appointed as a designated supervisor by the agent.



**Note:** A salesperson's licence and a branch manager's licence also authorises the licensee to sell or offer to sell on behalf of the agent, any land by auction without having to be licensed under the Auctioneer's Act 2013 (Section 49).

However, as part of their management and supervision policies, most agent licensees do not permit their salespeople to conduct an auction, particularly if they are inexperienced.

If they do, however, they must comply with rules in the Fair Trading Act stating how auctions must be conducted. These rules are outlined in sections 36Y to 36ZE of the Fair Trading Act.

An auctioneer who is licensed under the Auctioneer's Act 2013 does not require a real estate licence to sell or offer to sell any land by auction as they are specifically exempt under Section 8.

A Branch Manager:

- Is able to supervise other licensees.
- Can carry out real estate work for or on behalf of an Agent.
- Can sell or to offer to sell land by auction without having to be registered as an auctioneer.
- Is responsible for their continuing education each year.
- Is responsible to keep up with all changes in the real estate industry.

## Agent's licence held by an individual person.

### Real Estate Agents Act 2008

#### Section 48 – Agents Licence

- (1) An agent's licence authorises the licensee to carry out real estate agency work on his or her own account, whether in partnership or otherwise.
- (2) An agent's licence authorises the licensee to sell or offer to sell land by auction, and operates as an exemption from the requirement in the [Auctioneers Act 2013](#) to be registered as an auctioneer.
- (3) However, every licensee who conducts an auction of land must comply with the rules about the conduct of auctions set out in [sections 36Y to 36ZE](#) (but not the rule in [section 36ZE](#)) of the Fair Trading Act 1986.

To obtain a branch manager or agent license you must complete additional educational requirements over that required for a salesperson's licence, as outlined above. You also must have obtained 3 years' experience in real estate agency work within the ten years before the licence application.

An agent:

- Can employ or engage contractors that are current licensed real estate salespersons and branch managers to carry out real estate agency work on their behalf (as employees or contractors).
- Can carry out real estate work on his or her own account, whether as an individual, in partnership or as a director in a licensed company.
- Can sell or offer to sell land by auction and operate as an exemption from the requirement in the Auctioneers Act 2013 to be registered as an auctioneer.
- Is responsible for their continuing education each year.
- Is responsible to keep up with all changes in the real estate industry.
- Must supervise currently licensed salespersons themselves or appoint another currently licensed agent or branch manager to be a salesperson licensee's designated supervisor.

A currently licensed agent has an obligation under the Real Estate Agents Act and the Code of Conduct to make sure that currently licensed salesperson carrying out real estate agency work, for, or on their behalf, are properly supervised and managed.



Note: They must, however, comply with rules in the Fair Trading Act stating how auctions must be conducted. These rules are outlined in sections 36Y to 36ZE of the Fair Trading Act.

## Agent's licence held by a company.

An agent's licence can be held by a company, and this allows for the company holding the licence to carry out real estate agency work.

A current agent's licence allows the company holding the licence to employ or engage currently licensed real estate licensees to carry out real estate agency work for, or on behalf of the company (as employees or contractors).

A company may be licensed as an agent if, at any given time, at least one officer of the company holds a current agent licence as an individual. (Sections 36(3) and 44(2)).

Every real estate company is required to hold an agent licence in the name of the company, AND an individual agent licence in the name of one of the officers of that company.

- Section 36 (3) states that a company may be licensed as an agent if at least one officer of the company holds an individual agent licence as set out in subsection (1).
- Section 44 (2) This requirement is endorsed here which outlines the requirement that at least one officer of the company must hold an agent's licence at any given time.

# Licensing application process

## Licence application fees

An application fee is charged for processing a new application, along with an operational levy and a disciplinary levy which are annual charges to fund the costs of the REA and the Real Estate Agents Disciplinary Tribunal.

If a licence is not granted, the levies will be refunded. The application fee is non-refundable.

More information on costs can be found on the REA website [here](#).

## Criminal history check

When a licence application, or application to renew a licence, is received for processing, the REA has authorisation to carry out a criminal history check of the applicant.

The REA will request the following information from the New Zealand Police:

- a record of conviction history and any sentences, penalties or orders imposed and
- a record of any discharges without conviction and charges that have resulted in diversion.
- Information subject to name suppression where that information is relevant to the criminal history check.

## Objections to a licence being granted

As part of the licence application process, the details of any person or company applying for a licence must be advertised on the REA website for 14 days.

During this time anyone can object to a licence being issued to an applicant. (REA, n.d.-f). However, they can only object on the grounds specified in section 40 of the Real Estate Agents Act 2008. These grounds are:

- that the applicant is not eligible to obtain a licence under [section 36](#) or [37](#)
- if the applicant is a company, that any person who will be an officer of the company is not, due to personal character or financial position, a 'proper person' to be an officer of a licensee company.

## REA processes to licence application outcome

The REA informs applicants of the outcome of their application when the 14-day objection period is over and when they have received the result of the criminal history check. It can take up to 28 days for the REA to receive criminal history check results from police.

For application forms and more information about applying for a new license visit the REA website [here](#).

Information is recorded in the public [register](#) – it includes the following:

- The licensee's full name and business address or, in the case of a company, the registered office address and the address communications should be sent to.
- Any aliases used.
- The registration number issued by the registrar.
- The name of any company, body corporate or other agent the licensee is associated with, licence status, and history, including the following:
  - The class of licence held.
  - The date the licensee's name was entered in the register.
  - The date the licence is due to be renewed/due to expire.
- Any action taken on a disciplinary matter against the licensee during the past three years.

For more information visit the REA website [here](#).

## Changes the REA must be informed about

- If any of the following situations change, you must inform the REA. Examples include:
  - Any change in your contact information such as business address or phone number.
  - Any changes to your name.
  - A move to a different agency, change of branch, or a change in the real estate business you work for.
  - Anything that causes or may cause you to become prohibited from holding a licence or no longer being a 'fit and proper' person to be licensed as an agent, branch manager or salesperson.
- Any change required as set out in the Real Estate Agents (Licensing) Regulations 2009.
- Registered companies must also inform the REA of the following changes:
  - Changes to an officer or officers of the company who is licensed as an agent.



- Any change that may result in an officer(s) of the company becoming prohibited from holding a licence or no longer being a fit and proper person to be an officer of a licensee company.
- The appointment of a new officer or the removal or resignation of any existing officer.

For more information visit the REA website [here](#).

# Licensing renewals

## Renewal of an existing licence

A real estate licence will expire 12 months after it is issued. If you want to continue working as a real estate licensee, you must renew your license each year.

## Licensee's responsibility to renew

The REA sends licensees a renewal notification by email and text, four to six weeks before their licence is due to expire. It is your responsibility to renew your licence and to make sure your contact details are up to date, so you receive this reminder. You can also check the date your licence will expire on the REA public register, in the Licensee Portal, or on your evidence of licence.

## Renewal requirements

You can renew your licence online through the REA Licensee Portal. For more information on licence renewal, visit the REA website [here](#).

To renew your licence, you must

- Complete the licence renewal application through REA's licensee portal.
- You must pay the annual levies to the REA to renew your licence.
- Confirm you have complied with the Continuing Education (CE) requirements for the 20 hours of required training for the relevant year (unless exempt)
- Submit a declaration that you meet the eligibility requirements for licensing (i.e., that you are not prohibited from holding a licence under section 37 of the Real Estate Agents Act)
- Consent to a criminal history check.

If the REA does not receive your renewal application and all payments due before your licence expiry date, your licence will expire, and the Registrar will record the expiry in the register (Section 53).

You cannot carry out real estate agency work if your License has expired. The Registrar has the power to cancel a Licence that is not renewed on time. If this happens Section 37(d) states that a person whose Licence has been cancelled within the preceding 5 years is not eligible to hold a Licence.

You can also voluntarily suspend your licence or surrender it before the expiry date. Voluntary suspension entails a fee but does allow you to revive the licence if you decide to resume real estate agency work at some time in the future.

For more information, visit the REA website [here](#).

## Continuing education

You must have completed your [continuing education requirements](#) for any given year by 31 December of that year in order to renew your licence for the following year.

Continuing education has two parts:

- 10 hours of verifiable training
- 10 hours of non-verifiable training.

## Submission of an eligibility declaration

You will need to make an eligibility declaration to renew your licence. This means a declaration that your circumstances have not changed in terms of you not being prohibited to hold a licence and being a 'fit and proper person'.

Eligibility for renewing your licence is covered by sections 36 and 37 of the Real Estate Agents Act 2008.

In accordance with the Real Estate Agents Act, licensees are required to notify the registrar of any change in circumstances that may result in them no longer being a fit and proper person to be licensed.

The REA registrar must be notified of any change of circumstances that affects a licensee's eligibility to hold a licence, within 10 working days of the change occurring. This does not include any open complaints being considered by a Complaints Assessment Committee or the Real Estate Agents Disciplinary Tribunal. However, if you owe any outstanding costs or fines resulting from a disciplinary matter or have not complied with any other order this should be declared.

It is an offence to sign the renewal application form and to not disclose any eligibility matters. If you are granted a licence based on any false or fraudulent representation or declaration made orally or in writing your licence must be cancelled.

# Code of Conduct

## Introduction

**Acknowledgement:** The Real Estate Agents Handbook 2013 written by Martin Sawyers and Te-Aroha Jennings is referenced throughout the explanations of the Rules along with key legislation relevant to the real estate industry. The complete handbook contains the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, with policy intent behind the Rules.

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, also known as the **Code of Conduct** (and also commonly referred to as 'the Rules') - works in conjunction with requirements laid out in the Real Estate Agents Act 2008 and the four sets of Regulations.

The purpose of these rules is to provide a code of professional conduct and client care standards that all Licensees must practice.

The Code of Conduct applies to all aspects of real estate agency work:

- Standards of professional conduct and client care expected of a real estate licensee.
- All licensees working in the real estate industry are required to meet expected standards of professional conduct and client care.

Sections of the Code of Conduct cover the following:

- Rules 3.1 to 3.4 – Scope and Objectives
- Rules 4.1 to 4.2 - Interpretation
- Rules 5.1 to 5.2 – Standards of professional competence.
- Rules 6.1 to 6.4 – Standards of professional conduct.
- Rules 7.1 to 7.4 – Duty to report misconduct or unsatisfactory conduct.
- Rules 8.1 to 8.4 – Duties and obligations of agents.
- Rules 9.1 to 9.18 – Client and customer care.
- Rules 10.1 to 10.12 – Client and customer care for sellers' agents.
- Rules 11.1 to 11.6 – Client and customer care for buyers' agents.
- Rules 12.1 to 12.5 – Information about complaints.

## Scope and Objectives

- Clause 3.3 of the Code of Conduct states these rules set out the minimum standard of conduct and client and customer care that is expected of all licensees when carrying out real estate work.
- They are also used as a reference point for discipline.
- By law, the Code of Conduct must be displayed in real estate offices and be available to anyone on request. You can access the full Code of Conduct in your agency's office, on your agency's website or on the REAA website.

### Real Estate Agents Act 2008

#### 3 Scope and objectives

**Rule 3.1** These practice rules setting out a code of professional conduct and client care have been prepared by the Real Estate Agents Authority (the Authority). They constitute the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008.

**Rule 3.2** These practice rules set out the standard of conduct and client care that agents, branch managers, and salespersons (collectively referred to as licensees) are required to meet when carrying out real estate agency work \* and dealing with clients.

**Rule 3.3** These practice rules are not an exhaustive statement of the conduct expected of licensees. They set minimum standards that licensees must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct may be brought and dealt with despite the charge not being based on a breach of any specific rule.

**Rule 3.4** These practice rules must be read in conjunction with the Act and regulations, and do not repeat duties and obligations that are included in the Act or regulation.

Rule 8.2 outlines when a copy of "The Code" needs to be available and to whom you must give them to.

\* Real estate agency work is defined in the Real Estate Agents Act 2008 in Section 4 as follows:

(a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and

- (b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but
- (c) does not include—
  - (i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
  - (ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
  - (iii) the broadcasting of television or radio programs that include advertisements for the sale or other disposal of any land or business; or
  - (iv) the lending of money on mortgage or otherwise; or
  - (v) the provision of investment advice; or
  - (vi) the provision of conveyancing services within the meaning of the [Lawyers and Conveyancers Act 2006](#)

## Standards of professional competence

**Rule 5.1** endorses an existing legal requirement under the Consumer Guarantees Act 1993 which requires use of reasonable care and skill for the skills of a professional:

Rule 5.1 A licensee must exercise skill, care, competence, and diligence always when carrying out real estate agency work.

Consumer Guarantees Act 1993 reference.

### Consumer Guarantees Act 1993

#### Part 4 Supply of services

28 Guarantee as to reasonable care and skill.

Subject to section 41, where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

**Rule 5.2** from the Code of Conduct requires licensees to have a sound knowledge of the Real Estate Agents Act, the Regulations, the Code of Conduct rules, and other relevant legislation.

Rule 5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

# Standards of professional conduct

## General

Rule 6.1 of the Code of Conduct says:

Rule 6.1 A licensee must comply with fiduciary obligations to the licensee's client.

A licensee's fiduciary obligation is based on the overarching law principle of duty and loyalty to the client. The importance of a licensee's relationship with their client is clearly outlined in rule 6.1 of the Code of Conduct. The fiduciary obligation of licensees is to act with the utmost good faith and trust in their dealings with their client.

The 'client' is the party who has entered into an agency agreement with an agent to carry out real estate agency work (the client is the principal to the agency agreement contract).

Only the holder of an agent licence is entitled to enter into an agency agreement, which is between the agent (who provides a service) and the principal (the client who pays for the service).

The client is usually the seller/lessor of a property, business, or space. However, on occasion, a buyer or lessee may enter into an agency agreement with an agent whose services they enlist to purchase or lease a property, business, or space on their behalf.

It is important to note that while the agency relationship is between the agent and the client, fiduciary obligation applies to all licensees carrying out real estate agency work for and on behalf of the agent in relation to the transaction.



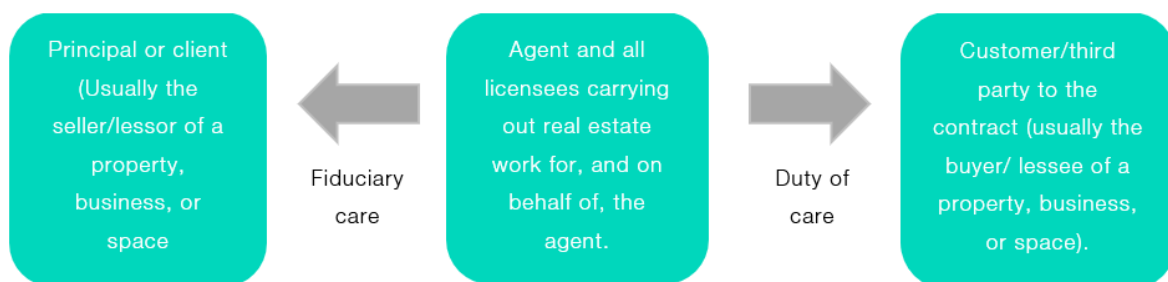
Rule 9.1 also highlights that the licensee's primary duty is to the client and that they must follow their client's instructions. However, the duty does not require or allow the licensee to break the law.

Rule 9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

**Rule 6.2** of the Code of Conduct says:

Rule 6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

Under the Code of Conduct licensees must not only meet their fiduciary obligations to the clients but also have a 'duty of care'. But they also are obliged to 'act in good faith and deal fairly with all parties engaged in a transaction' (rule 6.2).



Licensees are expected to know, and act upon, and within, their areas of legal responsibility, to provide sound advice and guidance, and to disclose information that is 'material' to either party in the transaction.

**Rule 6.3** of the Code of Conduct says:

Rule 6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.

This is a general provision of the Code of Conduct that can cover a wide variety of behaviour. It is consistent with the Real Estate Agent Act's purpose of promoting public confidence in the real estate agency industry and its work and not engaging in conduct that reflects badly on the industry.

Click on the link to see a recent case - [Complaint Number C29269](#)

## **Misleading and false information and unfairly withholding information**

**Rule 6.4** of the Code of Conduct says:

Rule 6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.



Rule 6.4 covers conduct relating to a licensee's dealings with customers as well as clients. This rule recognises the basic obligation not to mislead or act dishonestly to any parties in a transaction (Sawyers & Jennings, 2013). This includes omitting or withholding information, making positive statements that may mislead, and providing information that is untrue.

## Client and customer care

### General

**Rule 9.1** of the Code of Conduct says:

Rule 9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

Rule 9.1 confirms that the licensee's primary duty is to the client and that they must follow their client's instructions. However, the duty does not require or allow the licensee to break the law.

**Rule 9.2** of the Code of Conduct says:

Rule 9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.

Rule 9.2 aims to protect the interests of all consumers. Particular care must be taken with vulnerable clients and customers, for example the elderly or recently bereaved.

**Rule 9.3** of the Code of Conduct says:

Rule 9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.

Rule 9.3 reflects that regular communication with clients is required unless the client directs the licensee otherwise. For example, some clients who have a property, business or space listed with more than one real estate agent (general agency) may only wish the licensee to communicate with them when there is a potential buyer/lessee. Others may require regular updates by phone or in writing.

**Rule 9.4** of the Code of Conduct says:

Rule 9.4 A licensee must not mislead customers as to the price expectations of the client

Rule 9.4 confirms that licensees must avoid under quoting a client's price expectations to a potential customer with the aim of securing an offer. Licensees must avoid offering or advertising a confusing price range or minimum price different to the client's expectations. An advertised price must be a price that has the prospect of being given serious consideration by the client. Licensees need to exercise care to ensure that there is effective communication and understanding with clients around pricing.

**Rule 9.4** of the Code of Conduct works with rule 10.4. It addresses the risk of a licensee under quoting price expectations to a potential customer to secure an offer or advertising an ambiguous price range or minimum price different to the client's expectations.

#### **Appraisals and pricing**

Rule 10.4 An advertised price must clearly reflect the pricing expectations agreed with the client

**Rule 9.5** of the Code of Conduct says:

Rule 9.5 A licensee must take due care to—

- (a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and
- (b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.

Rule 9.5 confirms that licensees have a duty to ensure the security of a property/space/business they access, and to avoid the risk of damage by other parties they introduce there.

**Rule 9.6** of the Code of Conduct says:

Rule 9.6 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Rule 9.6 confirms that licensees must not market or advertise any land or business, including website advertising or signage unless authorised by a client through a written agency

agreement. This includes removal of all marketing information when an agency agreement ends.



Note: To ensure you are clear about the client's requirements, it is best practice to keep a written record of their instructions. Sawyers and Jennings (2013) suggest that you do this either by requesting the client supply these instructions or by making your own file notes or diary entries.

## Agency agreements and contractual documents

**Rule 9.7** of the Code of Conduct says:

Rule 9.7 Before a prospective client, client, or customer sign an agency agreement, a sale and Purchase agreement, or another contractual document, a licensee must—

- (a) recommend that the person seek legal advice; and
- (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and
- (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b)

Rule 9.7 seeks to ensure that consumers are encouraged to obtain legal advice, are informed of their rights to seek technical advice, and are given adequate time to do so before signing the relevant agreement.

**Rule 9.8** of the Code of Conduct says:

Rule 9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.

Rule 9.8 addresses the fact that clients and customers often have limited knowledge or experience in understanding, evaluating, and negotiating contracts.

This rule aims to manage these disadvantages for all consumers. Particular care should be taken with vulnerable consumers, for example, the elderly, people with limited English-speaking abilities etc.

**Rule 9.9** of the Code of Conduct says:

Rule 9.9 A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.

Rule 9.9 requires licensees to make sure that all relevant details and information are included in/attached to an agreement before submitting it to the client/customer to sign.

**Rule 9.10** of the Code of Conduct says:

Rule 9.10 A licensee must explain to a prospective client that if he or she enters or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent if a transaction is concluded.

Rule 9.10 requires the licensee to explain this potential risk before a client signs an agency agreement.

A situation where the risk of double commission for a client can arise is when they cancel an agency agreement with one agent and sign with another. The client may be liable for commission to the first agent in certain circumstances, for example, if a buyer initially introduced by the first agent buys the property later within a certain timeframe.

**Rule 9.11** of the Code of Conduct says:

Rule 9.11 On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.

Rule 9.11 attempts to ensure that clients have adequate information about whether they may be liable for two commissions when they decide whether to transact with a customer and therefore avoid situations where they are unexpectedly confronted with two commission claims from two agents.

Situations have arisen where sellers try to sell privately to a buyer introduced by an agent believing they do not have to pay a commission. However, if the buyer has been introduced by an agent, the seller is still liable to pay the agent a commission.

**Rule 9.12** of the Code of Conduct says:

Rule 9.12 An agent must not impose conditions on a client through an agency agreement that are not reasonably necessary to protect the interests of the agent.

Rule 9.12 is a consumer protection measure. The obligation is on the agent, rather than licensees generally, as agency agreements are established between the agent and the client. An example might be an extended cancellation period for terminating a general agency agreement of, say, 30 days when the industry standard is seven days.

**Rule 9.13** of the Code of Conduct says:

Rule 9.13 When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Rule 9.13 requires licensees to make sure that expenses that arise (such as advertising and marketing costs) are appropriate and proportionate to the value of the property, business or space being marketed and that additional marketing benefit is gained from the additional expenses. (Sawyers & Jennings, 2013)

## **Conflicts of interest rules**

**Rule 9.14** of the Code of Conduct says:

Rule 9.14 A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.

Rule 9.14 prevents a licensee from representing both a seller/lessor and buyer/lessee in the same transaction and claiming a commission from both parties.

**Rule 9.15** of the Code of Conduct says:

Rule 9.15 A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee's obligations.

Rule 9.15 requires licensees to avoid conflicts of interest that may arise from providing help or advice about property-related activities, such as buying insurance or arranging finance.

## The Real Estate Agents Act 2008 Section 134 - 137

### Section 134 - Contracts for acquisition by licensee or related person

If you, the licensee, are carrying out real estate agency work directly or indirectly for a client, you cannot acquire an interest in the property or business concerned without the consent of the client on the prescribed Form 2. The same applies to any person related to you, the licensee.

### Section 135 - Client to be provided with a valuation.

The independent registered valuation is at the licensee's cost, either before seeking the client's permission or within 14 days of obtaining that permission. If the valuation is not given prior to the offer and it comes in higher than the provisional valuation figure on Form 2 then the client may void the contract.

### Section 136 - Disclosure of other benefits that licensee stands to gain from transaction.

If you, or a 'related person' are to gain any other benefit from a real estate transaction in which you are acting as an agent, apart from earning commission, you MUST disclose this benefit in writing to all potential parties, whether clients or customers. This disclosure must be made prior to getting or presenting an offer. e.g. A developer promises to give you the future sale once the property is renovated or lending the purchaser money and receiving interest would be considered receiving another benefit.

### Section 137 - Meaning of licensee and person related to licensee in Sections 134 to 137

This section outlines what is considered a related person. This includes in the case of an agent that is company, every officer and shareholder of the company.



Remember, you cannot contract out of the law. The client cannot waive their rights under this regulation, so you must complete each step.



If you breach the requirements of Sections 134 or 135 and / or the Duty of Licensees Regulations 2009, you could also be found to have breached Rules

6.1, 6.2, 6.3 or 6.4 in the Code of Conduct and could face a charge of Unsatisfactory Conduct or Misconduct.

## Confidentiality

**Rule 9.16** of the Code of Conduct says:

Rule 9.16 A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee

Rule 9.16 recognises that a licensee must not use any confidential information obtained through their relationship with a client, regardless of whether it is for the benefit of themselves or another party. For example, they may not seek to profit from using information that a client is desperate to secure a transaction due to financial difficulty or a relationship breakdown.

**Rule 9.17** of the Code of Conduct says:

Rule 9.17 A licensee must not disclose confidential personal information relating to a client unless—

- (a) the client consents in writing; or
- (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or
- (c) proceedings against the licensee by the client; or
- (d) the licensee is required by law to disclose the information; or the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993

Rule 9.17 states that if any information confidential to the client is used, in marketing or communicated to potential customers in any way, consent must be obtained from the client in writing first. For example: “Buyer moving overseas. Must sell!!!!”

**Rule 9.18** of the Code of Conduct says:

Rule 9.18 Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.

Rule 9.18 builds on 9.17 by defining limited circumstances under which a licensee can disclose a client’s confidential personal information. These circumstances are consistent with those set out in the Privacy Act 1993.

## Client and customer care for seller's agents

The Rules under 10 Client and customer care for seller's agents covers client and customer care for seller's agents (where the agent has entered into an agency agreement with a client seller or lessor to sell or lease a property, business, or space).

These rules apply specifically where the agent is entering, or has entered, an agency agreement with a client seller or lessor to sell or lease a property, business, or space. They also apply to any licensees acting on the agent's behalf. (Sawyers & Jennings, 2013)

**Rule 10.1** of the Code of Conduct says:

Rule 10.1 This rule applies to an agent (and any licensee employed or engaged by the agent) who is entering, or has entered, into an agency agreement with a client for the grant, sale, or other disposal of land or a business.

Sawyers and Jennings (2013) clarify the key points covered by rule 10.2 as follows: The requirement to provide an appraisal applies to ALL transactions.

### Appraisals and pricing

**Rule 10.2** of the Code of Conduct says:

- Appraisals must be rigorous and factual.
- Licensees must seek to avoid the risk of over-representing or under-representing the potential market value of land or a business.

Rule 10.2 An appraisal of land or a business must—

- (a) be provided in writing to a client by a licensee; and
- (b) realistically reflect current market conditions; and
- (c) be supported by comparable information on sales of similar land in similar locations or businesses.

The obligation to provide factual market information (sale prices for recently sold comparable properties) aims to manage this risk. Appraisals must be provided in writing (though the rules do not prescribe a specific format).

It is important that clients understand why the properties, businesses or spaces have been selected as being 'comparable' and how the information being presented to them translates into the appraised price that the licensee has arrived at.



The licensee should have analysed the information when compiling the appraisal and therefore be in a good position to explain, in writing, to the client how they have reached the appraised price and what they have based that appraised price on.

**Rule 10.3** of the Code of Conduct says:

Rule 10.3 Where no, directly comparable or semi-comparable sales data exists, a licensee must explain this, in writing, to a client.

Rule 10.3 covers situations where there is no comparable information available to meet the requirements of 10.2(c). If this situation occurs, this must be explained to the client in writing. However, the lack of comparable information to use for an appraisal should be rare in practice but might apply for particularly unique properties.

The REA has noted that the claim of no comparable data is most often made in relation to commercial listings. (Sawyers & Jennings, 2013)

Licensees are not expected to disclose confidential information in providing comparable sales information. However, if the situation arises, they may be able to refer to it in the appraisal without identifying the subjects being used for comparison.

For commercial leases, a licensee may not be able to refer to leases because the information is commercially sensitive. However, in this situation they should know how much per square metre particular types of real estate are leasing for at any given time.

**Rule 10.4** of the Code of Conduct says:

Rule 10.4 An advertised price must clearly reflect the pricing expectations agreed with the client.

This rule along with rule 9.4 addresses the risk of a licensee under quoting price expectations to a potential customer to secure an offer or advertising an ambiguous price range or minimum price different to the client's expectations.

Licensees need to exercise care and ensure that there is effective communication and understanding with clients around pricing.

## Method of sale and the benefit to the licensee

Rule 10.5 of the Code of Conduct says:

**Relationship between prospective client's choices about how to sell and licensee's benefits.**

Rule 10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.

Under rule 10.5, licensees must ensure clients are aware of the different methods they can use to sell a property and how these can affect the benefits they gain from the sale.

This rule recognises that clients depend on receiving sound advice and information from licensees. Clients must be able to evaluate the information they receive and understand the advantages to the licensee based on the method of sale they choose.

This rule has significance in the situation where licensees are paid a higher percentage of the commission based on the method of sale. For example, some companies might pay their licensees a greater slice of commission for sales by auction or tender. The client needs to be confident that the recommended method of sale is in their best interest, not the licensee's.

## Agency agreements

Rule 10.6 of the Code of Conduct says:

Rule 10.6 Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—

- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the appraisal provided under rule 10.2;
- (b) when the agency agreement ends.
- (c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur;
- (d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c);
- (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Rule 10.6 confirms the information that a licensee must explain and supply in writing to a prospective client before the client signs an agency agreement.



Note. The requirement under 10.6(a) about commission reinforces the importance of an accurate appraisal as required by rule 10.2.

Rule 10.6(b) requires clients to be informed when the agency agreement ends.

Rules 10.6(c) and 10.6(d) require that licensees explain the marketing and advertising plan along with expenses that will be incurred, and that the client has no obligation to agree to these expenses. This also relates to rule 10.5 regarding disclosure of individual benefits.

10.6(e) requires that licensees explain that the REA can supply further information. The rule does not require information to be provided on the Code of Conduct itself nor on complaints procedures as these can be sourced from the REA. The licensee is required to draw the client's attention to the fact that this information is available. (Sawyers & Jennings, 2013).

In residential sales, under section 127 of the Real Estate Agents Act, licensees are also required to give clients an approved guide before they sign the agency agreement. They must also get a signed acknowledgement that the guide was given.

## Disclosure of defects

Disclosure of defects (rules 10.7 and 10.8) set out your obligations covered by the rules in "Standards of professional competence" These rules apply when an agency agreement is in place between an agent and a client seller or lessor.

**Rule 10.7** of the Code of Conduct says:

Rule 10.7 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects, a licensee must either—

- (a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or
- (b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

Note that rule 10.7 covers a wide range of defects and is not limited to the examples below:

- Weathertightness
- Unpermitted works
- Limited or no Code Compliance Certificate
- Incorrect boundaries
- Methamphetamine contamination
- Leaks

Rule 10.7 provides a quite specific two-step approach which must be adhered to in situations where a licensee suspects a property may be subject to defect of any kind.

Rules 10.7 and Rule 10.8 strike a balance between the right of buyers/lessees to obtain relevant information about a property they may buy or lease and the limitations of a licensee in terms of what they can reasonably know about the property. They also balance the licensee's legitimate obligation to be fair and truthful, and the ethical and moral obligations of the seller/lessor.

Rule 10.8 A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.

Where a 'reasonably competent' licensee thinks a hidden or underlying defect may be present, one of the licensee's two options is to get the client to confirm this is not the case, supported by physical evidence or expert advice. This is to ensure that licensees are relying on reliable information rather than speculation or opinion.

Alternatively, if the client has not provided this confirmation, the licensee must inform the customer of the potential risk so that the client can seek expert advice themselves.

Licensees must ensure that seller/lessor clients are aware of the licensee's disclosure obligations to buyer/lessee customers under rule 10.7.

Seller/lessor clients must be made to understand that the licensee must no longer act for clients who direct that such information be withheld. In other words, the licensee is entitled to cancel the agency agreement.

This rule provides significant protection to the licensee and enables them to protect themselves from exposure to the risk of breaching the Code of Conduct or other legislation such as the Fair Trading Act.

- All disclosure must occur under the informed and written consent of the client.
- If a situation occurs where the client refuses permission to disclose, but the licensee believes disclosure is necessary, the licensee must cancel the agency agreement and not disclose the information.
- In line with fiduciary duty, the licensee may not disclose the reason for cancelling the agency agreement.

The Real Estate Agents Handbook provides this example of a hidden or underlying defect relating to weathertightness.



Note: A 'caveat emptor' means the legal principle of 'buyer beware'. In other words, it is up to the buyer to 'do the homework' on whatever they purchase.

For example, houses built within a particular period, and of materials, are or may be at risk of weather tightness problems. A licensee could reasonably be expected to know of this risk (whether a seller directly discloses any weathertightness problems).

While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be considered under rule 10.7.

## Advertising and marketing

Rules 10.9 to Rule 10.12 of the Code of Conduct covers client and customer care for seller's agents.

Rule 10.9 A licensee must not advertise any land or business on terms that are different from those authorised by the client.

Advertising and marketing (rule 10.9) closely relate to rules 9.6 and 10.4.

## Contractual documentation and record keeping

Rule 10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

Sawyers and Jennings (2013) highlight that Rule 10.10 aims to make sure that clients are aware of all written offers and can consider them. Licensees must not pick and choose which information they pass on.

Licensees are not obligated to inform clients of verbal offers (though they can decide to do so). The focus on written offers means that clients are informed of all 'serious' offers. It also means that the details of the offer are clearly recorded and can form the basis for negotiations.

Rule 10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

Rule 10.11 allows for the agent's record keeping obligations under rule 10.12.

The requirement for licensees to provide the agent with a copy of a written offer submitted applies to all written offers they submit to clients, including offers that did not result in a transaction. (Sawyers & Jennings, 2013)

Rule 10.12 says:

Rule 10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction

The agent is legally required to keep a copy of all written Sale and Purchase Agreements that have been submitted to a client for a period of 12 months as per Rule 10.12.

This is regardless of whether the agreement was accepted or rejected.

## Client and customer care for buyer's agents

**Rules 11.1 to 11.6** of the Code of Conduct covers client and customer care for buyer's agents. These rules apply where the agent is entering, or has entered, an agency agreement with a client buyer or lessee to buy or secure a lease on a property, business, or space. It also applies to any licensees acting on the agent's behalf.

**Rule 11.1** says:

Rule 11.1 This rule applies where an agency agreement authorising an agent to undertake real estate agency work for a client in respect of the purchase or other acquisition of land or a business on the client's behalf (a buyer's agency agreement) is being entered into or has been entered.

**Rule 11.2** says:

Rule 11.2 Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing—

- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase:
- (b) when the agency agreement ends:
- (c) any additional services that the licensee will provide, or arrange for the provision of, on the client's behalf and the expenses relating to those services' payable by the client:
- (d) that the client is not obliged to agree to the additional expenses referred to in rule 11.2(c):
- (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Rule 11.2 mirrors the requirements covered by rule 10.6, with the difference being that rule 11.2(a) considers that commission will be based on the client's purchase price range. (Sawyers & Jennings, 2013).

**Rule 11.3** says:

Rule 11.3 A licensee must not undertake real estate agency work with customers, or other licensees, on terms that are different from those that are authorised by the client on whose behalf the licensee is carrying out real estate agency work.

Rule 11.3 states that licensees negotiating with sellers or lessors and other licensees on behalf of their client must do so only on terms that the client has agreed to.

**Rule 11.4** says:

Rule 11.4 A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.

Rule 11.4 requires the licensees to present all offers from clients to the customer, so long as they are in writing. This means that the licensee cannot make their own decisions about which offers to present.

**Rule 11.5** says:

Rule 11.5 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

Rule 11.5 mirrors rule 10.11 but in the context of submitting offers on behalf of a client to a customer. Copies of all submitted offers must be provided to the agent.

**Rule 11.6** says:

Rule 11.6 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

Rule 11.6 mirrors rule 10.12 but in the context of retaining offers submitted on behalf of clients by the agent and by other licensees employed or engaged by them. This includes offers that did not result in a transaction. (Sawyers & Jennings, 2013)

## Duties and Obligations of agents

### Promoting awareness of rules

**Rule 8.1** of the Code of Conduct require real estate agencies to ensure the public has access to the Code of Conduct rules prominently in the public area of each office or branch and provide access to them on every website.

Rule 8.1 An agent who is operating as a business must display these rules prominently in the public area of each office or branch and provide access to them on every website maintained by the agent for the purposes of the business.





Access to the Code of Conduct on a website could be via a link to the REA website. (Sawyers & Jennings, 2013)

**Rule 8.2** says:

Rule 8.2 Licensees must provide copies of these rules to any person on request.

Rule 8.2 requires agents and licensees to provide parties with a copy of the Code of Conduct rules if asked.

### **Supervision and management of salespeople.**

The Real Estate Agents Act 2008 and the Code of Conduct lays out the obligations of agents and branch managers regarding the supervision of licensees.

The Professional Standard on Supervision ('the Supervision Standard') is set by the REA under section 12(1)(i) of the Real Estate Agents Act 2008. The purpose of this Standard is to provide guidance to all licensees about their supervision obligations under the Real Estate Agents Act and the Code of Conduct.

Rule 8.3 of the Code of Conduct underlines Section 50 of the Act and places a positive obligation on agents to make sure meaningful and appropriate supervision is being provided.

Rule 8.3 An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed

In addition, the Lawyers and Conveyancers Act 2006 restricts licensed salespeople from carrying out activities if they have less than six months' experience in real estate agency work.

### **'Proper' supervision and management**

Section 50(1) of the Real Estate Agents Act 2008 states that a salesperson must be properly supervised and managed by an agent or branch manager when carrying out real estate agency work.

#### **Real Estate Agents Act 2008**

##### **Section 50 Salespersons must be supervised.**

(1) A salesperson must, in carrying out any agency work, be properly supervised and managed by an agent or a branch manager.

- (2) In this section properly supervised and managed means that the agency work is carried out under such direction and control of either a branch manager or an agent as is sufficient to ensure-
- (a) that the work is performed competently; and
  - (b) That the work complies with the requirements of this Act



The supervising agent or branch manager must have a licence (at the required level). Under section 142 of the Real Estate Agents Act, it is illegal for a person to hold out any individual (including himself or herself) as a salesperson, branch manager or agent unless that person holds the relevant licence.

Under section 143 of the Real Estate Agents Act, it is illegal for anyone to employ or contract someone as an agent, branch manager or salesperson who is not appropriately licensed.

Section 51(3) of the Act states that an agent (agency) who engages a salesperson as an independent contractor is liable for the acts and omissions of the salesperson in the same manner, and to the same extent, as if the agent had employed the salesperson as an employee.

## Promoting continuing education

Rule 8.3 of the Code of Conduct underlines Section 50 of the Act and places a positive obligation on agents to make sure meaningful and appropriate supervision is being provided.

### Ensuring knowledge of regulatory framework and promoting continuing education

**Rule 8.4** An agent who is operating as a business must ensure that all licensees employed or engaged by the agent have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

**Rule 8.5** An agent who is operating as a business must ensure that licensees employed or engaged by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.

# The Professional Standard on Supervision

The information in this section is taken from section 1 of the Professional Standard on Supervision (REA, 2017).

The Professional Standard on Supervision applies to:

- Licensed agents who are supervising salespersons.
- Licensed branch managers who are supervising salespersons.
- All salespersons.
- Agencies that employ or engage salespersons.

The Professional Standard on Supervision applies to individuals in these roles regardless of the professional experience they have or whether they are working as employees or contractors.

The Standard states that it is principle based (REA, 2017). This means it does not prescribe specific requirements or steps to be followed. Instead, it outlines general objectives to be achieved.

Section 1 of the Standard indicates that licensees are expected to use and apply the Supervision Standard to suit their own circumstances when first establishing a supervision arrangement, and then on an ongoing basis as a salesperson's experience and competence increases.

The Supervision Standard does not create any binding rules of law that are directly enforceable against licensees. However, it will be used by the REA when considering compliance and enforcement.

It is anticipated that Complaints Assessment Committees (CACs) and the Real Estate Agents Disciplinary Tribunal (Tribunal) will also have regard to the Supervision Standard when considering matters that raise supervision issues.



Note: A licensed agent does not legally have to be supervised if they are employed or contracted as a salesperson, but it is recommended that the employer or principal and the agent still apply the Professional Standard on Supervision.

A complete copy of the Professional Standard on Supervision document can be found on the REA website [here](#).

The Supervision Standard states that the supervisor must be actively involved with the salesperson by

- Understanding their level of experience and skill and placing conditions and/or restrictions on their real estate work as appropriate
- Understanding the issues with each of the properties being listed and sold by the salesperson.
- Conducting regular meetings with the salesperson and asking questions to draw out matters that might be of concern (such as resource consents, boundary issues, lack of Code Compliance Certificates, planned developments in the area and disclosure of known defects and issues with the Land Information Memorandum)
- Being available for questions, dealing with day-to-day issues, and fostering and encouraging communication with the salesperson being supervised
- Ensuring that they keep up to date with industry issues, Tribunal decisions and guidelines issued by REA so they can transfer knowledge and provide guidance to the salesperson being supervised.

## Differences between supervision and employment line management

The information in this section is from sections 3 and 5 of the REA's Professional Standard on Supervision (2017) and focuses on making sure that salespersons perform real estate agency work competently and that the work meets the requirements of the Real Estate Agents Act.



Note that supervision under the Act is not the same as management of an employment relationship.

A line manager is the person who directly manages the employee or contractor. Anyone may act as a salesperson's line manager, but only a licensed agent or licensed branch manager may supervise a salesperson in carrying out real estate agency work.

For example, it is the responsibility of the manager (rather than the salesperson's supervisor) to ensure that all salespersons working at the agency have a current licence understand their statutory obligations and meet their continuing education requirements. This is particularly the case in larger agencies.

Each salesperson should have a clearly designated supervisor. That supervisor must be a licensed agent or branch manager with sufficient skill and experience to provide effective supervision to the salespersons they are responsible for supervising.

While the Supervision Standard focuses on a traditional model of a single designated supervisor, it still allows for other licensed agents and licensed branch managers to provide supervision, oversight, and guidance as and when required. However, it must be clear to the salesperson who is supervising them at any point in time.

'New salesperson' means a salesperson with less than 6 months' experience as a licensee.

'Inexperienced salesperson' means any salesperson (other than a new salesperson) with limited experience in real estate agency work, or aspects of certain real estate agency work.

Under section 36(2A) of the Lawyers and Conveyancers Act 2006, new salespersons with less than six months' experience as a licensee cannot prepare sale and purchase agreements or advise clients or customers about their legal rights and obligations that are incidental to the preparation of those agreements. (This is also covered by section 5.5 of the Professional Standard on Supervision).

This means that a salesperson with less than six months' experience cannot draft or negotiate any agreement for sale and purchase, lease, or the goodwill of a business. They also cannot provide conveyancing advice relating to an agreement.

Even after the 6-month restriction period on new salespersons is no longer applicable, supervisors should take care to ensure that all agreements prepared by inexperienced salespersons are subject to appropriate review.

## Salespersons' rights and responsibilities in relation to supervision

Licensed salespersons must fully understand their rights and responsibilities regarding the supervision they receive. They must also be aware of how their ability to meet their obligations as they perform real estate agency work is influenced by their supervision.

It is commonplace for supervising agents and branch managers to have responsibility for ensuring that licensees comply with their agency's compliance policies and procedures.

Proper supervision helps to make sure that both licensees and the agency meet all legal obligations.

- Licensees are responsible for complying with policies and procedures regardless of whether they agree with them.
- Licensees are not entitled to carry out real estate agency work that conflicts with policies and procedures.
- If a licensed salesperson feels that the supervision being provided is not adequate to meet their needs and level of experience, they are within their rights to request additional support.

## Guidance for newly licensed salespersons

As we have seen, during the initial 6-month period, newly licensed salespersons cannot prepare sale and purchase agreements or advise either clients or customers about their legal rights and obligations that are incidental to the preparing of those agreements.

However, a new licensee may carry out all other duties, including appraising, listing, and marketing properties, so long as this work aligns with their agency's policies and procedures.

In your first six months, attend and observe as many contractual discussions as you can to gain knowledge of the work involved in drafting, negotiating, and concluding sale and purchase agreements.

Section 6 of the Real Estate Agents Handbook indicates that, while you are a new or inexperienced salesperson, your supervisor should support you with:

- Reviewing, assisting with, and confirming appraisals and agency agreements.
- Supporting with preparing for and running open homes to ensure you have the property information you need.
- Observing and providing feedback on your performance and interpersonal interactions, including in the context of open homes, phone calls and face-to-face conversations with clients and customers.
- Providing regular one-to-one meetings that give you the opportunity to address any problems or questions that have come up.
- Checking your written communications to make sure they are of a high professional standard and that you are fairly and accurately disclosing and representing information.
- Changing their supervision approach appropriately as you gain demonstrable experience, competency, and the ability to maintain legal compliance (Sawyers & Jennings, 2013)

- Even after the 6-month restriction period on new salespersons is no longer applicable, supervisors should take care to ensure that all agreements prepared by inexperienced salespersons are confirmed through appropriate review.

## Summary of steps to enter into an agency agreement

Here is a summary of the steps licensees are required to follow when entering into an agency agreement with a client. This list refers to many of the Code of Conduct rules and Sections from the Act covered on the previous pages.

Steps	Ref
Provide prospective client with a written appraisal for the property that reflects current market conditions and is supported by sale prices of similar properties	Rule 10.2
Provide prospective client with the conditions under which the commission will be paid, including a written estimated cost (an actual dollar amount) of commission they will be required to pay based on the appraisal	Rule 10.6(a)
Provide the prospective client with a marketing plan showing how the property will be marketed and advertised, along with any associated costs, and that the prospective client is not obliged to agree to the additional expenses.	Rule 10.6(c) Rule 10.6(d)
The licensee cannot advertise the property on terms different to those authorised by the client	Rule 10.9
Recommend prospective client gets legal advice, making sure they know they can seek technical or other advice and information, and giving them a reasonable opportunity to obtain that advice and information before they sign the agency agreement	Rule 9.7
Provide prospective client with a copy of REA's guide to agency agreements and get a signed acknowledgement of receipt from the prospective client before they sign the agency agreement	Section 127
Ensure that the prospective client is aware of the company's in-house complaints procedures and that they can access the Authority's complaints process first without using the in-house procedures, and that	Rule 12.1 Rule 12.2



Steps	Ref
use of the in-house procedures does not stop them from making a complaint to the Authority	Rule 12.3
Explain to the client the risk of paying commission to more than one agent	Rule 9.10
Explain to the prospective client when the agreement will end	Rule 10.6
Advise the prospective client of the various possible methods of sale and how your chosen method could impact on the individual benefits that the Licensees may receive.	Rule 10.5
Advise the prospective client of their fiduciary obligation to disclose to the licensee any material facts or suspected defects of the property, and explain the licensee's obligations to disclose that information to potential customers	Rule 6.1 Rule 6.2 Rule 6.4 Rule 10.7
The agent must include a statement that identifies the source of all rebates, discounts, or commissions that the agent will or is eligible to receive in respect of those expenses; and specifies the estimated amount of those rebates, discounts, or commissions (to the extent that the amount can reasonably be estimated.)	Section 128
Include all material particulars in or attached to the agency agreement before the licensee asks the prospective client to sign the agreement.	Rule 9.9
Obtain the prospective client's signature on the agency agreement and give the client a copy of the signed agreement within 48 hours of it being signed.	Section 126
Explain to them they have the right to cancel the Sole Agency Agreement up until 5pm of the next working day	Section 130
Explain the right to cancel the sole agency agreement 90 days after the agreement is signed.	Section 131

Steps	Ref
A Licensee must communicate regularly and in a timely manner to keep the client well informed of relevant matters unless instructed by the client not to.	Rule 9.3

# Complaints

Licensees must comply with all legal requirements and standards in the Code of Conduct. If you fail to comply with these requirements, you may find yourself the subject of a complaint by a client, customer, or other party.

## In-house complaints procedures

Rule 12.1 of the Code of Conduct requires real estate agencies to have in-house procedures for managing the resolution of complaints and disputes.

Rule 12.1 An agent must develop and maintain written in-house procedures for dealing with complaints and dispute resolution. A copy of these procedures must be available to clients and customers.

## Awareness of clients and customers about complaints procedures

Rule 12.2 A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.

Rules 12.2 and 12.3 require licensees to ensure clients and customers are aware of the agency's procedures before they sign any contracts. Licensees must also ensure clients and customers are aware that they can also choose to complain directly to the REA, instead of, or as well as, using the agency's process.

Rule 12.3 A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not preclude their making a complaint to the Authority.

## Informing the agent about complaints

### Rule 12.4

A licensee employed or engaged by an agent must advise the agent within 10 working days of becoming aware of—

- (a) any complaint made to the Authority against them, the decision of the Complaints Assessment Committee made in respect of that complaint, and any order made by the Committee in respect of that complaint; and
- (b) if the matter proceeds to the Tribunal, the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.

Rules 12.4 and 12.5 require licensees to inform the agency they are, or were, carrying out real estate agency work on behalf of if a complaint is made against the licensee. The requirement is that the agency must be informed within 10 working days of the licensee becoming aware of the complaint.

Rule 12.5 If a licensee was employed or engaged by a different agent at the time of the conduct relevant to the complaint referred to in rule 12.4, the licensee must also provide the information referred to in rule 12.4(a) and (b) to that agent within 10 working days of becoming aware of the complaint.

## Unsatisfactory conduct or misconduct

Depending on how far removed your actions are from the required professional standards, your actions may be considered as unsatisfactory conduct or misconduct.

Unsatisfactory conduct and misconduct are defined by the Real Estate Agents Act 2008.

Rule 7.1 A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct may make a report to the Authority

### Reporting of unsatisfactory conduct and misconduct.

Rule 7.1 recognises that a licensee may make a confidential report to the REA when unsatisfactory conduct by another licensee is suspected.

A Complaints Assessment Committee will make the initial decision as to what action needs to be taken, based on the information reported.

### Unsatisfactory conduct

#### Real Estate Agents Act 2008

#### Section 72

A licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that –

- (a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
- (b) contravenes a provision of this Act or of any regulations or rules made under this Act; or
- (c) is incompetent or negligent; or
- (d) would reasonably be regarded by agents of good standing as being unacceptable.

According to the Real Estate Agents Act 2008, unsatisfactory conduct may be conduct that does not comply with legal requirements, is of a standard that is below what the public have a right to expect, demonstrates negligence or a lack of competence, or breaches professional standards of good practice. (Section 72).

Rule 7.2 imposes a positive obligation on a licensee who suspects another licensee of misconduct to report such conduct. A Complaints Assessment Committee will make the initial decision as to what action needs to be taken, based on the information reported.

Rule 7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct must make a report to the Authority.

## Misconduct

### Real Estate Agents Act 2008

#### Section 73

A licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of—
  - (i) this Act,
  - (ii) other Acts that apply to the conduct of licensees or
  - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the fitness to be a licensee.

The REA must refer a complaint to a Complaints Assessment Committee under Section 74 of the Real Estate Agents Act 2008. The Complaints Assessment Committee must determine whether to inquire into the complaint or not, or whether to refer the complaint to another agency e.g., the Police. Once an inquiry has taken place, the Complaints Assessment Committee holds a hearing (usually on the papers) and makes its decision. The CAC may determine to take no further action or make a finding of unsatisfactory conduct.

If a CAC believes that there is sufficient evidence, it can lay a charge of misconduct that will be determined by the Disciplinary Tribunal. Misconduct is a serious matter as the penalties include loss of licence. The Real Estate Agents Act 2008 identifies misconduct as behaviour that is 'disgraceful', 'seriously incompetent' or 'negligent', or involving 'wilful or reckless' failure to comply with legal requirements.

In simple terms, it is an inability to undertake real estate agency work due to serious incompetence or deliberate decisions to break the rules and the law.

Rule 7.3 A licensee must not use, or threaten to use, the Authority's complaints or disciplinary process against other licensees, for an improper purpose.

The purpose of rule 7.3 is to ensure that licensees do not use the complaints process for vexatious purposes, for example, in circumstances where a commission dispute has arisen.



**Note:** A vexatious complaint means one that is without merit and brought purely to cause annoyance, inconvenience or expense to the person complained about.

A relevant case is [Tucker v Complaints Assessment Committee](#), Claydon & Richardson [2012] NZREADT 46.

Research these unsatisfactory conduct and misconduct cases complaint decisions by clicking on the links. This may help you to avoid the same mistakes.

- CAC and some Disciplinary Tribunal decisions can be searched for on the REA website [here](#).
- Disciplinary Tribunal decisions can also be searched for on the Ministry of Justice website [here](#).

Rule 7.4 If a licensee learns that a person is committing an offence by undertaking real estate agency work without a licence, the licensee must immediately report the matter to the Authority.

Also note the requirements of rule 7.4. This rule creates a positive obligation on licensees to report unlicensed real estate agency work to the REA and highlights the following points as important considerations in relation to rule 7.4:

- The positive reporting obligation reflects the seriousness of the activity.
- A licensee who is found to have not reported known unlicensed real estate work will face disciplinary action.
- Licensees should be aware that if they make a report of suspected unlicensed trading to the REA, and the REA takes prosecution action against the unlicensed trader, it is possible that the licensee's original report or extracts from it may be disclosed to the unlicensed trader as part of the Authority's compliance with the Criminal Disclosure Act 2008.

- Licensees who require confidentiality should alert the REA to this and the REA will do its best to accommodate that (although note that this may not be possible in all cases).

REA deals with complaints based on the risk they present. When they receive a complaint, the REA assesses the following:

- Whether the complaint falls within REA's scope
- The degree of actual or possible harm
- How serious the alleged behaviour is.
- How important it is to the public interest that the REA deters future conduct of this kind.
- Depending on the REA's assessment, one of the following may occur (n.d-c):

If the REA does not have jurisdiction over the alleged conduct or the conduct is not a disciplinary issue under the Real Estate Agents Act 2008, the REA will take no further action. If the conduct falls within the jurisdiction of another agency, the REA will direct the complainant to the relevant agency if possible.

The REA may advise the licensee on how to improve their compliance or recommend that the parties go to mediation. Mediation may be carried out through REA or an external mediator.

If the licensee's actions appear to qualify as unsatisfactory conduct or misconduct and the REA considers that it may be necessary to take enforcement action the complaint maybe referred to a Complaints Assessment Committee.

If the Complaints Assessment Committee believes the licensee's actions may be misconduct, it may lay charges with the Real Estate Agents Disciplinary Tribunal.

You can find this information on the REA's website [here](#).

## Process and powers of the REA when receiving complaints.

Firstly, it is dealt with under section 74 of the Real Estate Agents Act 2008.

### Real Estate Agents Act 2008

#### Section 74 Complaints about licensees

- (1) Any person may, in accordance with regulations made under this Act, complain in writing to the Authority about the conduct of a licensee.
- (2) When the Authority receives a complaint under this section, the Authority must—
  - (a) refer the complaint to the Registrar of the register of licensees, who must consider whether to deal with the complaint under subsection (3); and
  - (b) if the Registrar decides not to deal with the complaint under that subsection, refer the complaint to a committee for determination and notify the person complained about of the reference.
- (3) The Registrar may determine that—
  - (a) the complaint discloses only an inconsequential matter, and for that reason need not be pursued:
  - (b) the complaint is frivolous or vexatious or not made in good faith, and for that reason need not be pursued:
  - (c) the complaint should be referred to another agency, and refer it accordingly:
  - (d) the complaint has been resolved to the complainant's satisfaction and no further action is needed.

Section 75 covers the Complaints Assessment Committee.

### Real Estate Agents Act 2008

#### Section 75 Authority to appoint Complaints Assessment Committees

- (1) The Authority must appoint as many Complaints Assessment Committees as, in its opinion, are required to deal effectively with complaints and allegations about licensees.
- (2) Each Committee consists of 3 members appointed from the panel maintained under [section 76](#).
- (3) One of the members of each Committee must be a lawyer of not less than 7 years' legal experience.
- (4) The Authority must designate one of the members as the chairperson of the Committee, and another member as the deputy chairperson.



Section 76 covers the Panel.

## **Real Estate Agents Act 2008**

### **Section 76 Panel**

- (1) The Authority must maintain a panel of up to 20 persons who are suitable to serve as members of Complaints Assessment Committees.
- (2) In considering the suitability of any person for inclusion on the panel, the Authority must have regard not only to the person's personal attributes but also to the person's knowledge and experience of matters likely to come before a committee.
- (3) The knowledge and experience referred to in subsection (2) includes, without limitation, experience, and knowledge of—
  - (a) law:
  - (b) the real estate industry:
  - (c) consumer affairs.
- (4) The name of a person must be removed from the panel when 5 years have elapsed since the Authority approved the inclusion of the person's name on the panel or if the person resigns from the panel.
- (5) If subsection (4) applies, the name of the person must not be removed from the panel until any current matters that the person is considering as a member of a committee have been disposed of by the Committee.

If the REA refers a complaint to a CAC, the affected licensee(s) and the complainant(s) will receive written notification along with a copy of the complaint. This usually occurs within 10 days of the date the complaint was made to the REA.

## **Real Estate Agents Act 2008**

### **Section 78 Complaints Assessment Committees (CACs)**

Under section 78 of the Real Estate Agents Act 2008, the function of a Complaints Assessment Committee (CAC) is described as follows:

- (a) to inquire into and investigate complaints made under [section 74](#):
- (b) on its own initiative, to inquire into and investigate allegations about any licensee:
- (c) to promote, in appropriate cases, the resolution of complaints by negotiation, conciliation, or mediation:
- (d) to make final determinations in relation to complaints, inquiries, or investigations:
- (e) to lay, and prosecute, charges before the Disciplinary Tribunal:
- (f) in appropriate cases, to refer the complaint to another agency:
- (g) to inform the complainant and the person complained about of its decision, reasons for the decision, and appeal rights:
- (h) to publish its decisions.

The REA may also carry out initial fact finding to supply the CAC with relevant information.

### **Promotion of negotiation, conciliation, or mediation**

The Committee can direct parties to enter negotiation, conciliation or mediation and work together to resolve or rectify a complaint.

#### **Real Estate Agents Act 2008**

##### **Section 87 Negotiation, conciliation, and mediation**

- (1) A Committee may give, in relation to any complaint received by it, a direction that, within a time or before a date fixed by the committee, the parties both –
  - (a) explore the possibility of resolving, by negotiation, conciliation, or mediation,
    - (i) the complaint; or
    - (ii) any issues relating to the complaint as the Committee specifies; and
  - (b) report to the committee.
- (2) the Committee must not give a direction under subsection (1) if it considers that such a direction –
  - (a) would not contribute constructively to resolving the complaint; or
  - (b) would not, in all the circumstances, be in the public interest; or
  - (c) would undermine the urgent nature of the complaint.
- (3) If the parties reach an agreed settlement in relation to the complaint or any issue involved in the complaint, the committee-
- (4) may record the terms of the settlement; and
- (5) may, by consent of the parties, declare all or some of the terms of the settlement to be all or part of a final determination of the complaint by the Committee.

However, if all parties reach a resolution through negotiation, conciliation or mediation, a committee may record the terms of settlement and declare the settlement to be full or part of a final decision.

## The Powers of the Complaints Assessment Committee

According to the REA, the CAC will hold a meeting to review and address the complaint. This meeting is usually held within 20 working days of when the complaint is received, but this can depend on whether it has all the information it needs. The CAC may ask the REA to carry out further investigation.

The CAC will consider complaints if the licensee's conduct appears to have broken laws or rules if the licensee has been involved in similar conduct in the past and/or if it is in the public interest to investigate the behaviour thoroughly.

A CAC can do any of the following:

- Find that no further action is needed.
- Find that the licensee has engaged in unsatisfactory conduct.
- Find that the licensee may have committed misconduct and refer the complaint to the Real Estate Agents Disciplinary Tribunal.

### Appealing a CAC decision

Licensees and complainants can appeal a CAC decision to the Real Estate Agents Disciplinary Tribunal within 20 working days after the date of the decision.

If charges are laid with the Disciplinary Tribunal, the licensee(s) will receive written notification. Licensees are entitled to legal representation. They are also entitled to appear and speak before the Tribunal. Hearings are usually open to members of the public.

The CAC may ask the REA to carry out further investigation. It will consider complaints if the licensee's conduct appears to have broken laws or rules if the licensee has been involved in similar conduct in the past and/or if it is in the public interest to investigate the behaviour thoroughly.

If the CAC finds licensee behaviour to be unsatisfactory conduct it may do one of the following:

- Censure or reprimand the licensee.
- Determine that the licensee must issue an apology to the complainant.
- Determine that the licensee must receive additional training or education.
- Order that the licensee's fees are reduced, cancelled, or refunded.
  - ◆ Order the licensee to correct an error or omission.
  - ◆ Impose fines of up to \$10,000 (for an individual) or \$20,000 (for a company).
  - ◆ Order that costs are paid to the complainant.

## Real Estate Agents Act 2008

### Section 93 Power of Committee to make orders.

- (1) If a Committee makes a determination under [section 89\(2\)\(b\)](#), the Committee may do 1 or more of the following:
- (a) Make an order censuring or reprimanding the licensee:
  - (b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint:
  - (c) order that the licensee apologise to the complainant:
  - (d) order that the licensee undergo training or education:
  - (e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
  - (f) order the licensee—
    - (i) to rectify, at his or her or its own expense, any error or omission; or
    - (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission:
  - (g) order the licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
  - (h) order the licensee, or the agent for whom the person complained about works, to make his or her or its business (including any records, accounts, and assets) available for inspection or take advice in relation to management from persons specified in the order: (ha) if the Committee is satisfied that the unsatisfactory conduct involves more than a minor or technical breach of this Act or of any regulations or rules made under this Act, make an order referring the matter to the Disciplinary Tribunal for the Tribunal to consider whether to make a compensation order under [section 110\(5\)](#):
  - (i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee.
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

The costs are set by the CAC. You can find this information on the REA website [here](#)

## The Disciplinary Tribunal

Section 102 of the Real Estate Agents Act 2008, describes the functions of the Disciplinary Tribunal are described as follows:

### Real Estate Agents Act 2008

#### Section 102 Functions of Tribunal

- (a) To hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee.
- (b) To hear and determine any charge against a licensee brought by the Committee.
- (c) To hear any appeal under [section 111](#) against a determination by the Committee (including a determination to take no action).
- (d) To conduct any review, under [section 112](#), of a decision of the Registrar.
- (e) Any other functions conferred by this Act

If charges are laid with the Disciplinary Tribunal, the licensee(s) will receive written notification. Licensees are entitled to legal representation. They are also entitled to appear and speak before the Tribunal. Hearings are usually open to members of the public.

### Appealing a Disciplinary Tribunal decision

If the licensee disagrees with the Tribunal's decision, they can make appeals to the High Court and the Court of Appeal. The Court of Appeal will only hear appeals regarding questions of law.

CAC and Disciplinary Tribunal decisions are published.

After the CAC or Disciplinary Tribunal decide, there is a 20-working day period during which appeals can be made. The decision is then published.

CAC and some Disciplinary Tribunal decisions are published on the REA website. Disciplinary Tribunal decisions are also published on the Ministry of Justice website.

After considering a charge, the Tribunal can do any of the following:

- Decide that no further action should be taken.
- Find that the licensee has engaged in unsatisfactory conduct or misconduct.
- Make any of the same orders that a CAC can make.
- Issue more serious penalties than a CAC has the power to do, including:
- Ordering the suspension or cancellation of a licensee's licence.

- Ordering the termination of the licensee's employment and banning any agent from employing or contracting them for further real estate agency work.
- Fining the licensee up to \$15,000 (if an individual) or up to \$30,000 (for a company).
- Ordering that compensation for actual loss is paid by the licensee to the complainant. This compensation may be up to \$100,000.
- Prohibiting the licensee from performing supervisory functions until authorised.

## Real Estate Agents Act 2008

### Section 110 Determination of charges and orders that may be made if charge proved (extract)

- (1) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that it has been proved on the balance of probabilities that the licensee has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in subsection (2).
- (2) The orders are as follows:
- (a) 1 or more of the orders that can be made by a Committee under [section 93](#) (except under section 93(1)(ha));
  - (b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company;
  - (c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months;
  - (d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so.
  - (e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work;
  - (f) an order that a licensee who is an individual pay a fine not exceeding \$15,000 and order a licensee that is a company pay a fine not exceeding \$30,000;
  - (g) where it appears to the Tribunal that any person has suffered loss by reason of the licensee's misconduct and the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law, an order that the licensee pay to that person a sum by way of compensation as is specified in the order, being a sum not exceeding \$100,000.
- (3) The making of an order under this section for the payment of compensation to any person does not affect the right (if any) of that person to recover damages in respect of the same loss, but any sum ordered to be paid under this section, and the effect of any

order made under this section for the reduction, cancellation, or refund of fees, must be taken into account in assessing any such damages.

- (4) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that, although not guilty of misconduct, he or she has engaged in unsatisfactory conduct, it may do either or both of the following:
  - (a) make any of the orders that a Complaints Assessment Committee may make under [section 93](#) (except under section 93(1)(ha)):
  - (b) if it appears to the Tribunal that any person has suffered loss by reason of the licensee's unsatisfactory conduct, make an order that the licensee pay to that person a sum not exceeding \$100,000 by way of compensation, but only if—
    - (i) the unsatisfactory conduct is more than a minor or technical contravention of this Act or of any regulations or rules made under this Act; and
    - (ii) the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law.
- (5) If a Complaints Assessment Committee refers a matter to the Tribunal under [section 93\(1\)\(ha\)](#), the Tribunal may, if satisfied that the requirements of subsection (4)(b) (except paragraph (b) (i)) are met, make a compensation order under that subsection.

## The Complaints Resolution Process

REA recommend a three-step process for making a complaint and reporting unsatisfactory conduct or misconduct.

Here is a diagram showing the steps involved in the complaints process:

Complainant is encouraged to use the real estate agency's in-house complaints process.

All real estate agencies are required to have an in-house complaints process. REA encourage complainants to discuss their complaint with the real estate agency concerned, using the in-house complaints process, before proceeding with a complaint to them.



Complainant contacts REA for help to decide on best way to resolve issue.

If the complaint cannot be resolved through the real estate agency's in-house complaints process, REA advise complainants to phone or email them to discuss the complaint, so REA can help them decide the best way to deal with the complaint, and whether REA is the appropriate agency to deal with it. For example, more serious complaints may need to be referred to the Police or to the Commerce Commission. Alternatively, the REA may not have jurisdiction, for example in property management cases where they would refer the complainant to the Tenancy Tribunal.



Complainant makes a written complaint to REA.

If REA are the appropriate agency to deal with the complaint, complainants make a written complaint to REA. This is done by downloading REA's complaint form and posting or emailing the completed form, with any supporting evidence, to REA. Once they have received the written complaint, it must be referred to a Complaints Assessment Committee (CAC). CAC's will be covered in more detail later.



When the Authority receives a complaint, the Authority must— refer the complaint to the Registrar of the register of licensees, who must consider whether the complaint is inconsequential, frivolous, vexatious or that no further action is needed.

Below is the process the REA follow once a written complaint is lodged. It shows the various stages in the process and the Appeals process.

