

Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009

Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority, with the approval of the Minister of Justice given in accordance with section 17 of that Act, and after consultation in accordance with section 16 of that Act, makes the following rules.

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Rules

1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

2 Commencement

These rules come into force on 17 November 2009.

3 Scope and objectives

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.

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

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.

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 regulations.

4 Interpretation

4.1 In these rules, -

Act means the Real Estate Agents Act 2008

customer means a person who is a buyer or potential buyer of land or a business, and who is not a client as defined under section 4 of the Act

prospective client means a person who is considering or intending to enter into an agency agreement with an agent to carry out real estate agency work.

4.2 Unless the context otherwise requires, terms used in these rules have the same meaning as in the Act.

5 Standards of professional competence

5.1 A licensee must exercise skill, care, competence and diligence at all times when carrying out real estate agency work.

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

6 Standards of professional conduct

6.1 An agent must comply with the fiduciary obligations to his or her client arising as an agent.

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

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

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

6.5 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Further, where it appears likely, on the basis of the licensee's knowledge and experience of the real estate market [1], that land may be subject to hidden or underlying defects, the licensee must either -

(a) obtain confirmation from the client 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.

6.6 A licensee must not continue to act for a client who directs that information of the type referred to in rule 6.5 be withheld.

7 Duty to report misconduct or unsatisfactory conduct

- 7.1 A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct [2] may make a report to the Authority.
- 7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct [3] must make a report to the Authority.
- 7.3 A licensee must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.
- 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.

8 Awareness of duties, and obligations on agents to create awareness of Act, regulations and rules - Carry

- 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 it on every website maintained by the agent for the purposes of the business.
- 8.2 A licensee must make these rules available to any person on request.
- 8.3 An agent who is operating as a business must ensure that licensees engaged or employed by the agent are familiar with the Act and other legislation relevant to real estate agency work, associated regulations, and any rules made by the Authority, including these rules.
- 8.4 An agent who is operating as a business must ensure that licensees engaged or employed by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.

9 Client care and dealings with customers

General

- 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.
- 9.2 A licensee must not engage in any conduct that would put a client, prospective client or customer under undue or unfair pressure.
- 9.3 A licensee must not take advantage of a client's, prospective client's or customer's inability to understand relevant documents, where such inability is reasonably apparent.
- 9.4 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest.

Appraisals and pricing

- 9.5 An appraisal of land or a business must be provided in writing to a client by a licensee; must realistically reflect current market conditions; and must be supported by comparable information on sales of similar land in similar locations or businesses.
- 9.6 An advertised price must clearly reflect the pricing expectations agreed with the client.
- 9.7 A licensee must not mislead customers as to the price expectations of the client.

Agency agreements and contractual documents

9.8 When inviting signature of an agency agreement a licensee must explain to a prospective client 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 appraised price of the land or business:

(b) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur: it must be explained to the prospective client that he or she is not obliged to agree to such additional expenses:

(c) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

9.9 When inviting signature of an agency agreement or a sale and purchase agreement, or other contractual document, a licensee must ensure that a prospective client, client and/or customer is aware that he or she can, and may need to, seek legal, technical or other advice and information, and allow the prospective client, client and/or customer a reasonable opportunity to do so.

9.10 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.

9.11 A licensee must not invite a prospective client to sign a sole agency agreement without informing the prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than one agent in the event that a transaction is concluded.

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.

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

9.14 A licensee must retain copies of all offers (whether such offers resulted in a transaction or not) for a period of 12 months.

Advertising and marketing

9.15 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.

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

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

9.18 A licensee must take due care to ensure the security of the land or business and avoid risks of damage that may arise from customer access to the land or business.

Conflicts of interest

9.19 A licensee must not act in a capacity that would attract a commission from both a client and customer in the same transaction.

9.20 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.

Confidentiality

9.21 A licensee must not disclose confidential personal information relating to a client, unless -

- (a) the client consents in writing; or
- (b) the licensee is required by law to disclose the information; or
- (c) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client.

9.22 Where a licensee discloses information under rule 9.21(b) or (c), it may only be to the appropriate person or entity and only to the extent necessary for the permitted purpose.

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

10 Information about complaints

10.1 An agent must ensure that there are written in-house procedures for dealing with complaints and dispute resolution.

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

10.3 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.

10.4 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, then the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.

