



Professional Standard on Supervision

**Set by the Real Estate Authority under section
12(1)(i) of the Real Estate Agents Act 2008**

Version 1: Effective 1 July 2017

The law requires that a salesperson carrying out agency work must be properly supervised and managed by an agent or branch manager.

This Standard details guiding principles and information to assist licensees to understand how to meet their legal obligations.

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Important note

The Real Estate Authority (REA) is the operating name of the Real Estate Agents Authority (REAA).

1 Introduction

- 1.1** The Real Estate Agents Act 2008 (the Act) and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (“the Code of Professional Conduct and Client Care”) include several important obligations relating to supervision. Section 50(1) of the Act provides that a salesperson must be “properly supervised and managed” by a licensed agent or licensed branch manager (“the supervisor”) when carrying out agency work.
- 1.2** The Real Estate Authority (“REA”) has issued this professional standard (“the Standard”) to provide guidance to all licensees about their obligations in regard to supervision under the Act and the Code of Professional Conduct and Client Care.
- 1.3** This Standard applies to:
- a) licensed agents supervising salespersons
 - b) licensed branch managers supervising salespersons
 - c) all salespersons¹
 - d) agencies that employ or engage salespersons.
- 1.4** The Standard is concerned with all salespersons, whether they are employees or contractors, and regardless of their level of experience.
- 1.5** The Standard is principle based. That is, it does not prescribe specific requirements or steps to be followed. Rather, it outlines general objectives to be achieved. Licensees are expected to use and apply the Standard in the context of their own circumstances when first establishing a supervision arrangement and then on an ongoing basis as a salesperson’s experience and competence increases.
- 1.6** The Standard does not create any binding rules of law that are directly enforceable against licensees. However, it will be used by REA in respect of its compliance and enforcement decision making. It is anticipated that Complaints Assessment Committees and the Real Estate Agents Disciplinary Tribunal will also have regard to the Standard when considering matters that raise supervision issues.
- 1.7** The Standard may be reviewed and amended by REA from time to time.

¹ Where a licensed agent is employed or engaged as a salesperson, they are not legally required to be supervised. However, we recommend that, in such circumstances, the agent and their employer/principal still apply this Standard.

2 Properly supervised and managed

- 2.1** Section 50 of the Act provides that a salesperson must, in carrying out any agency work, be properly supervised and managed by a licensed agent or licensed branch manager.

All salespersons must be supervised and managed by an agent or a branch manager.

- 2.2** “Properly supervised and managed” means the agency work is carried out under such direction and control of the supervisor as is sufficient to ensure that the work is performed competently and complies with the requirements of the Act.² Rule 8.3 of the

Code of Professional Conduct and Client Care requires agents operating as a business to ensure that all salespersons employed or engaged by them are properly supervised and managed.

Properly supervised and managed requires direction and control sufficient to ensure the agency work carried out by a salesperson is performed competently and complies with the requirements of the Act.

3 Supervision is not the same as employment line management

- 3.1** Supervision is focused on ensuring that the salesperson is performing real estate agency work competently and that the work meets the requirements of the Act.

- 3.2** A salesperson’s line manager³ may also be their supervisor, or a salesperson may have a separate supervisor and line manager. Whatever the situation, it is important that all parties are clear that supervision under the Act is not the same as management of an employment relationship. For example, ensuring that all salespersons working at the agency have a current licence, understand their statutory obligations and meet their continuing legal education requirements are responsibilities that

properly rest with a manager rather than the salesperson’s supervisor (see Rule 8.4 of the code of Professional Conduct and Client Care).

- 3.3** Anyone may act as a salesperson’s line manager, but only a licensed agent or licensed branch manager may supervise a salesperson.

² Refer to section 50(2) of the Act.

³ For the purposes of this Standard, “line manager” means the person who directly manages the employee.

Only a licensed agent or licensed branch manager may be a supervisor.

- 3.4** Each salesperson must have a clearly designated supervisor. The supervisor needs to be a licensed agent or licensed branch manager with sufficient skill and experience to provide effective supervision to the salesperson(s) they are responsible for supervising. Although the Standard contemplates a traditional model of a single designated supervisor, it does not mean that other licensed agents and licensed branch managers cannot provide supervision, oversight and guidance as and when required. However, it must be clear to the salesperson who is supervising them at any particular point in time.

Each salesperson must have a clearly defined designated supervisor or supervisors.

- 3.5** A written supervision plan/agreement is desirable. An effective supervision plan/agreement should clearly identify the supervisor and salesperson and set out the roles, responsibilities and practical steps that the supervisor and salesperson will take to ensure the supervision arrangement is implemented. The plan/agreement can also be used to ensure that the form and method(s) of supervision are clear to the supervisor, salesperson and any separate line manager. Such a document may be part of, or separate to, any employment agreement or contractual arrangement in place between the salesperson and the licensed agent or agency.

A written supervision plan/agreement is an effective means of ensuring a salesperson is aware of who their supervisor is and how supervision will operate.

- 3.6** The ultimate responsibility for supervision sits with the designated supervisor. It is incumbent on them to raise and deal with any issues with the salesperson concerned. However, an experienced and competent salesperson may assist a supervisor with the oversight of day-to-day tasks⁴ carried out by less-experienced salespersons.
- 3.7** A supervisor may put temporary supervision arrangements in place in the event they are, or may become, unavailable, but only a licensed branch manager or licensed agent may undertake the supervision.

⁴ The day-to-day tasks that may be overseen should be determined by the supervisor, having regard to the experience and competence of both the salesperson assisting and the salesperson under supervision.

4 Actual, active and tailored to the circumstances

- 4.1** The Standard contemplates effective supervision. Supervision must be actual and tailored to the circumstances of the salesperson and the transactions in which they are involved.
- 4.2** Agencies should have systems, policies and procedures in place to supervise and manage their salespersons. However, these cannot be a substitute for actual and effective supervision by a designated supervisor providing direction and control that takes account of the circumstances of their salespersons and the properties being sold.
- 4.3** The frequency, mode and intensity of supervision may vary in each case. The supervisor is expected to exercise judgement that takes account of each salesperson's experience and training, the complexities of the real estate market in which they are operating, the nature of the transactions performed and the requirements of the client or customer.
- 4.4** Supervisors are not expected to sight and direct every aspect of a salesperson's real estate agency work. However, a supervisor should be actively and regularly involved with a salesperson's activity. Ultimately, what is required is an exercise of judgement as to the nature and degree of supervision that is appropriate in each case to ensure effective supervision.
- and skill of the salesperson and placing conditions and/or restrictions on their real estate work as appropriate
- b) understanding the issues with each of the properties being listed and sold
 - c) conducting regular meetings with the salesperson being supervised 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)
 - d) being available for questions, dealing with day-to-day issues, and fostering and encouraging communication with the salesperson being supervised
 - e) 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.

The nature and degree of supervision will vary from salesperson to salesperson; based on their experience, competence and wider operating conditions.

- 4.5** The supervisor must be actively involved with the salesperson, which means:
- a) understanding the level of experience

5 Drafting sale and purchase agreements

- 5.1** “Agreement” means any agreement for sale and purchase of land or any interest in land or of the goodwill of a business or of chattels.⁵
- 5.2** Supervisors need to monitor the performance of salespersons in drafting agreements to ensure high standards are maintained. Agreements should be well written, with clauses that suit their intended purpose and are clear, unambiguous and easily understood. The supervisor should be alert to identifying potential problems rather than waiting for a salesperson to identify them.
- 5.3** As New Zealand’s population becomes more ethnically diverse, supervision should include an assessment of the competence of a salesperson to draft an agreement in English. If necessary, additional oversight and assistance should be provided, including translation.
- 5.4** Every agreement should be reviewed by the supervisor. The timing and degree of review required in each case is a judgement call for the supervisor to make. Supervisors must be actively involved in agreements drafted by inexperienced salespersons or those not maintaining a consistently high standard of drafting. This includes reviewing agreements before the parties sign them.
- 5.5** Under section 36(2A) of the Lawyers and Conveyancers Act 2006, new salespersons⁶ with less than six months’ real estate agency work experience cannot prepare sale and purchase agreements or advise clients or customers about their legal rights and obligations that are incidental

to the preparing of those agreements. Having a salesperson observe contractual discussions conducted by their supervisor or other salespersons is an effective way of demonstrating good practice and developing their experience.

- 5.6** Even after the six-month restriction on new salespersons set out in paragraph 5.5 is no longer applicable, supervisors should take care to ensure that all agreements prepared by inexperienced⁷ salespersons are subject to appropriate review.

A salesperson with less than six months’ real estate agency work experience cannot prepare sale and purchase agreements or provide advice to clients about their legal rights and obligations.

⁵ Refer to section 36(2) of the Lawyers and Conveyance’s Act 2006.

⁶ For the purposes of this Standard, “new salesperson” means a salesperson with less than six months’ real estate agency experience.

⁷ For the purposes of this Standard, “inexperienced salesperson” means any salesperson (including a new salesperson) with limited experience in real estate agency work or certain aspects of real estate agency work.

6 New and/or inexperienced salespersons

- 6.1** Supervisors must take extra care when supervising a new and/or inexperienced salesperson. In practice, a supervisor should:
- a) review and assist with the preparation of appraisals and agency agreements
 - b) engage with the salesperson before they run open homes to ensure they are knowledgeable about the property and have information on hand to assist customers and periodically attend their open homes to observe the salesperson's performance
 - c) have regular one-on-one meetings to discuss any questions or problems the salesperson may be having
 - d) periodically sit in on phone and face-to-face conversations to observe how the salesperson interacts with clients and customers
 - e) periodically check written communications to ensure consistently high standards of professionalism are maintained and that disclosures and representations are fair and accurate.
- 6.2** When the supervisor is satisfied the salesperson is conducting real estate agency work in a competent and legally compliant manner, they may adjust how they supervise the salesperson to a way that reflects supervision of a more experienced and competent salesperson.

Supervisors may change the nature and degree of supervision as a salesperson demonstrates increased competence and experience.

7 Salespersons who work at a different location to their supervisor

- 7.1** The law does not require a supervisor to be physically present in the same location as the salesperson at all times or for all supervision to be conducted face to face.
- 7.2** It does not matter where the supervisor and salesperson are physically located, the requirement is the same. The salesperson must be “properly supervised and managed”, which means working under sufficient “direction and control” to ensure competence and compliance with the Act.⁸

The law does not require a salesperson to be supervised in the presence of the supervisor. However, at all times, supervision requires the salesperson to be under sufficient direction.

⁸ Refer to section 50 of the Act.

- 7.3** Whether the supervisor can exercise sufficient direction and control will depend on:
- a) the experience of the salesperson and the supervisor
 - b) the availability of experienced salespersons to assist with the oversight of day-to-day activities
 - c) whether the supervisor manages their own listings
 - d) how many other salespersons the supervisor is responsible for
 - e) the policies, systems and procedures in place at the agency.
- 7.4** Exercising sufficient direction and control where a salesperson is working in a different location to their supervisor, or where physical supervision is not available (or regularly available) will require careful planning and systems.
- 7.5** Supervision provided where there is regular or occasional physical distance between a supervisor and salesperson is commonly referred to as “remote supervision”. Remote supervision can mean different things to different people because it occurs to varying degrees and is used in a variety of circumstances. It is not practicable or reasonable to define in this Standard what form or extent of remote supervision is appropriate, as this will always vary from case to case.
- 7.6** Remote supervision presents significant practical challenges (such as being involved in the salesperson’s consumer interactions) and considerable risks for the supervisor who has ultimate responsibility for the salesperson. Any remote supervision, particularly in the case of a new or inexperienced salesperson, is likely to require substantial extra planning and contingencies to be put in place.

7.7 Forms of remote supervision may be acceptable as part of wider supervision arrangements in place between a supervisor and a salesperson. If any form of remote supervision is to feature as part of a supervision arrangement, it may be helpful to have this reflected in a written supervision plan/agreement.

7.8 Supervisors are encouraged to use available technology (such as Skype and instant messaging applications) to ensure a salesperson is properly supervised and managed on a regular basis. Any technological solution used should be as effective as face-to-face contact.

Remote supervision is not prohibited, but care must be taken. More effort may need to be put into the design of the supervision arrangement and then making the relationship work. Regular communication between the salesperson and the supervisor is imperative.

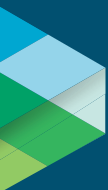
8 Number of salespersons that may be supervised by a supervisor

- 8.1** There is no set ratio or maximum number of salespersons that a supervisor may supervise. However, supervisors should consider the matters identified in paragraph 4.5 (about conducting active supervision), paragraph 6.1 (about new and/or inexperienced salespersons) and paragraph 7.2 (about exercising sufficient direction and control) and exercise their own judgement about whether they are capable of supervising multiple salespersons and, if so, how many salespersons they can appropriately and effectively supervise and manage at any one time.

Supervisors may supervise more than one salesperson. How many will depend on the supervisor's capacity and capability and take account of the level of experience and competence of each salesperson being supervised.

9 Record keeping

- 9.1** It is recommended that supervisors keep supervision records in addition to any supervision plan/agreement that may be used. The form and extent of record keeping should reflect the nature of the supervision (for example, supervision of a new salesperson might be expected to require a greater level of record keeping than might be involved for an experienced salesperson).
- 9.2** Where REA receives a complaint about a salesperson, the adequacy of supervision will be considered. If supervision is, or appears to be, an issue, the supervisor will be provided an opportunity to demonstrate how they have complied with this Standard. Up-to-date supervision records are important to demonstrate compliance. If the supervisor is not able to produce records or otherwise demonstrate they have complied with this Standard, this will be relevant to REA's compliance and enforcement decision making.



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