**Conversations with REA – South Auckland 29 July 2021**

**Questions from licensees**

**Licensee responsibility**

***What obligations do licensees have to bring up issues of misconduct from other licensees?***

The Real Estate Agents Code of Conduct outlines a licensee’s obligation to report misconduct and unsatisfactory conduct.

*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.*

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

The Code of Conduct also reinforces the need for real estate professionals to respect the complaints process and to not us the regulatory system in an improper manner. For instance making *‘*frivolous’ or ‘vexatious’ complaints against competitors.

An additional obligation for licensees is to report anyone undertaking real estate work without a license.

**What is a licensee’s responsibility when handling ‘sensitive’ information?**

One of the most difficult decisions a licensee can face is whether to disclose a sensitive issue that doesn’t relate to the physical state of the property.

If a licensee is selling a property and is aware of a sensitive issue, they should discuss the individual circumstances with the vendor.

Licensees cannot make any disclosure or share sensitive information without the vendor’s consent.

If a licensee does disclose sensitive information this should be handled with care and sensitivity.

For example it is not appropriate to include sensitive information in advertising.

However, if the vendor has provided consent, sensitive issues must be disclosed to potential buyers who have indicated an interest in submitting an offer on the property.

If a real estate professional believes sensitive information should be shared with potential buyers but the vendor doesn’t, they may not disclose the information.

In this situation the licensee should discuss the issue with their real estate agency and consider ceasing to act for the vendor.

They may also seek legal advice if they have a concern that their client’s instructions potentially cause them to be in breach of their professional obligations.

**Do you need to tell ‘buyers’ who you represent?**

The Code of Conduct clearly states the dual responsibilities of licensees in regard to their duty of care to clients and to potential buyers.

*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.*

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

These obligations include the need to reinforce to ‘buyers’ who a licensee is representing in the real estate transaction.

**Do we need to tell a vendor what a ‘buyers’ highest price is?**

If a potential buyer discloses their ‘highest price’ the licensee has an obligation to let the vendor know.

This is part of their duty of care to their client.

**Do you think we will see more ‘buyer’s agents’ in New Zealand?**

A buyer’s agent works on the buyer’s behalf to find a property. They are more common overseas than in New Zealand. However, in the current high-pressured market with low stock it is possible that more New Zealanders will use buyer’s agents to try and secure a property.

A licensee’s obligations as a buyer’s agent are outlined in clause 11 of the Code of Conduct.

Buyer’s agents are hired and paid by the buyer, not the seller. They can search for properties, bid at an auction or negotiate with the seller on the buyer’s behalf.

Buyer’s agents must be licensed and should only operate on behalf of a client after an agency agreement has been agreed and signed. This needs to outline the cost of any services provided.

It is important to remember that a licensee cannot work for both the buyer and the seller on the sale of the same property. This is a conflict of interest as outlined in the Code of Conduct.

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

**Complaints**

***How many complaints are settled before going to the CAC / Tribunal?***

In the 2020 / 21 financial year REA received 1565 complaint enquiries and 32o formal complaints.

Of these

***How do we protect licensees?***

REA assesses each complaint that is made. This process gives licensees a layer of protection by picking up irrelevant, ‘frivolous’ or ‘vexatious’ complaints

The early resolution process is also a great way to ensure licensees are given the opportunity to work with consumers to resolve issues efficiently.

When a complaint is resolved through early resolution the licensee and the complainant avoid going through a lengthy investigation phase and a potential CAC enquiry.

***Can we fine the complainant? Why are there no consequences for ‘frivolous’ or ‘vexatious’ complaints?***

Having an independent and easily accessible complaint process is a vital part of the regulatory framework.

As noted, earlier REA vets each complaint enquiry to ensure they are relevant. Each complaint enquiry is recorded which gives REA data on each complainant and them of their complaint.

This process helps REA manage *‘*frivolous’ or ‘vexatious’ complainants.

**New licensees / supervision**

***Have you noticed a drop-off in the skill level of new people joining the industry in the last three years?***

REA issued a record 2,597 new licensees during the 2020/21 financial year. As at 30 June 2021 total active licensees were 16,254 up 737 from a year earlier. This is the highest level of licences since the establishment of REA.

The changing economic situation due to COVID-19 and the attractive hot property market may have contributed to the increase in new salespeople, with skilled New Zealanders. The average age of new licensees is 38. This indicates that our new entrants are bringing a wealth of experience, energy and insight into the industry.

REA believes this influx of new talent creates opportunities for the industry to grow and develop. Strong supervision of effective onboarding of new licensees is critical if we are to develop the potential of our new entrants.

The CPD programme is a great tool to help licensees grow their knowledge and skills. Please use these resources to support your new entrants.

There is always significant churn within the sector. Historically 21% of licensees do not renew after their first year and 33% of licensees usually won’t last more than 2 years. It’s too early to know whether the class of 2021 will buck the trend, or we will see even higher churn.

Our data clearly shows that the growth in active licences over the last year is dominated by an increase in salesperson licences. Active numbers of Branch Manager, Individual Agent and Company Agent have all decreased. Our current estimated average ratio of salesperson to Branch manager/agent is 1:16 which presents some risk as supervision is a critical aspect of the regulatory regime that we oversee.

We are also aware that a disproportionate number of agents, branch managers particularly those operating in a supervisory capacity are nearing the end of their careers. This poses a succession planning challenge for the industry, as we need a good number of supervisors to support the high number of salespeople.

***Should there be a hard limit for the number of salespeople a supervisor can supervise?***

REA do not believe there should be a hard cap / limit for the number of salespeople that a supervisor can manage. We believe the key to good supervision is the ‘quality’ of supervision rather than the ‘quantity’ of licensees being supervised.

The Real Estate Authority - 2021 Annual Licensee Survey, reported that just 44% of the salesperson have a supervision plan, 24% do not have a supervision plan and, 32% don’t know.

This data raises a ‘red flag’ for REA. A supervision plan is an important tool to measure the success of supervision. We urge all salespeople to work with their supervisor to develop a plan to support their career development,

Supervision needs to be effective to ensure that risks for consumers are mitigated and proper processes and standards are met.

***Should new licensees have to wait a year before they are responsible for drawing up a sales and purchase agreement?***

The current standard is that new licensees need to wait six months before they can draw up a sales and purchase agreement.

REA believes this should time limit should not be viewed as a target. If an agency and / or a supervisor believes a new salesperson needs more time to develop their skills and knowledge they should be given more time before assuming greater responsibility.

**Qualification’s framework**

***Why is online learning an option for training? Is this as effective as in person / classroom learning?***

The qualifications framework has been designed to give licensees a range of options in how they complete their learning modules. This includes ‘classroom’ and virtual options.

Online learning can be particularly useful for learners who are working full-time, live in remote areas or have family or whanau commitments.

Regardless of whether learning is completed in person or virtually licensees need the support of their supervisors and branch managers to ensure they can transfer what they learnt in the classroom into the ‘real world’ of real estate transactions.

**Why is there not a qualification between salesperson and branch manager?**

The Level 4 (salesperson), Level 4 (brand manager), and Level 6 (agent) qualifications which have been approved by NZQA match the requirements set out in the Real Estate Agents Act.

A fourth level sitting between branch manager and agent would not have been supported by this legislation.

However, we encourage agents to work closely with branch managers to ensure their transition from Level 5 to Level 6 is well supported.

Agencies and individual should tailor their training and supervision to ensure licenses have the skills and experience required to meet their new obligations as an agent.

***If the new framework is going to be ready in 2022 what about people who want to start a branch manager / or agents’ qualification now?***

The new framework will be fully operational n 2022. However, licensees can still start their branch manager or agents qualifications in 2021.

There is no need to wait till 2022 to being the Level 5 and Level 6 qualifications.

**Property management**

***What is happening with property managers? Is there going to be training / regulation for the sector?***

In terms of future regulation, there are still many decisions to be made in this space by the Government, but we have reached out to our policy colleagues to say we are ready, willing and able to provide policy advice and work with them in this area. We see clear synergies between our work with licensees and the expectations for property managers, so we want to support the process to achieve an effective regulatory framework. Watch this space.

**Building inspectors**

***What is REA doing to promote the use of high-quality independent building inspectors?***

Using a high-quality building inspector is a vital part of the due diligence that potential buyers should do before making a bid.

To help educate and support consumers the Real Estate Authority created [settled.govt.nz](file:///C%3A%5CUsers%5CKevinS%5CDesktop%5Csettled.govt.nz) in 2018. At [settled.govt.nz](file:///C%3A%5CUsers%5CKevinS%5CDesktop%5Csettled.govt.nz) potential buyers and sellers can find comprehensive, independent information to help them confidently engage in real estate transactions.

This includes a detailed assessment of the due diligence process. Seetled.govt.nz suggests that consumers should ensure they use a high-quality independent building inspector who complies with the New Zealand standard and has professional indemnity insurance.

In the 2020/21 financial year there were over 1 million visits to [settled.govt.nz](file:///C%3A%5CUsers%5CKevinS%5CDesktop%5Csettled.govt.nz). Most visitors came to the site as a result of an organic search, where the website has been suggested as a useful resource based on what consumers have searched for online.