
Real Estate

Continuing Professional Development

Understanding key concepts

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Learning objectives

Understanding:

- The meaning of professional competence in a real estate industry context
- The definition of real estate agency work and when it begins and ends
 - Real estate agency work
 - Transaction
- Standards of professional conduct when carrying out real estate agency work
- The meaning of best practice in a real estate industry context
- The meaning of ethics in a real estate industry context
- Individual and corporate responsibilities in terms of professional competence and ethics
 - Professional competence responsibilities
- The consequences of unethical behaviour for real estate agencies and licensees
- Professional competence and ethics in relation to fiduciary duty and duty of care

The meaning of professional competence in a real estate industry context

Professional competence can be defined as the capability to perform the duties of one's profession generally, or to perform a particular professional task, with skill of an acceptable quality.

In the real estate industry, when carrying out real estate agency work, licensees must perform duties and tasks to the minimum standard required by the Real Estate Agents Act 2008, the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules) (refer to Appendix 1) and other legislation and legal requirements relevant to real estate agency work (refer rule 5.2)

Rule 5.0 confirms the need for licensees to demonstrate acceptable standards of professional competence.

Rule 5.0 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, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

For example, licensees must exercise skill, care, competence and diligence when:

- compiling an appraisal
- compiling marketing and advertising material
- writing up an agency agreement
- liaising with consumers (vendors or lessors; purchasers or lessees; prospects)
- writing up a sale and purchase or lease agreement
- communicating with clients



Key Points

- It is important to remember that the Rules set *minimum* standards that licensees must comply with; but should aim to exceed
- The Rules are a reference point for discipline for those who do not meet the minimum standards
- 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

The definition of real estate agency work and when it begins and ends

Real estate agency work

The definition of real estate agency work is found in Section 4 (Interpretation) of the Real Estate Agents Act 2008 (the Act), as follows:

real estate agency work or agency work—

- (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 programmes 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

Real estate agency work begins as soon as you commence work which is aimed at bringing about a transaction.

Real estate transaction

Section 4 (of the Act) – Interpretation, sets out the following meaning:

transaction means any 1 or more of the following:

- (a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land:
 - (b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies):
 - (c) the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:
 - (d) the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003:
 - (e) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).
- (2) To avoid doubt, the sale, purchase, or other disposal or acquisition of shares comes within the definition of transaction in subsection (1) if, and only if, the shares entitle the holder to a licence that is registrable under Part 7A of the Land Transfer Act 1952.

It is important to understand when real estate agency work begins and ends; and to perform all duties and tasks with the professional competence, as required by the Rules, throughout the entire process.

Note: In certain circumstances, real estate agency work may continue after settlement.



Key Point

In the past it was widely accepted that 'real estate agency work' was completed when a transaction became unconditional. However, in a decision of the High Court, *House v REAA* [2013] NZHC 1619, the judge determined that 'real estate agency work' continues until settlement of a transaction.

However, in some circumstances 'real estate agency work' can continue after settlement. For example, in a decision by the Disciplinary Tribunal [2013] READT 92 the Tribunal determined that settling a commission dispute (after settlement) is also 'real estate agency work', therefore 'real estate agency work' is not completed until that dispute is resolved.

Cases: *House v REAA* [2013] NZHC 1619 / [2013] READT 92
<http://www.nzlii.org/nz/cases/NZHC/2013/1619.html>
<http://www.nzlii.org/nz/cases/NZREADT/2013/92.html>

Revision points

- Real estate agency work begins as soon as you start doing work that is intended to bring about a transaction. However, you are not entitled to carry out any marketing or advertising work until an agency agreement is signed by all parties.
- A licensee could face a complaint for failing to meet professional competence requirements in relation to any activities carried out before an agency agreement is signed.
- If a vendor has an existing agency agreement in place, it is important to remember that it might have a 7-day cancellation clause, so any new sole agency agreement cannot commence before that date.
- In certain circumstances real estate agency work may continue after settlement. For example, in [2013] READT 92, the Tribunal determined that settling a commission dispute (after settlement) is also 'real estate agency work'. The real estate work therefore continues until all outstanding matters have been dealt with between the agency and client.

Standards of professional conduct when carrying out real estate agency work

Professional conduct can be defined as:

'The accepted manner in which a professional will act'

Thelawdictionary.org

As mentioned previously, when carrying out real estate agency work licensees must perform duties and tasks to at least the minimum standard required by the Rules.

Rule 6.0 clarifies the need for licensees to demonstrate standards of professional conduct.

Rule 6.0 Standards of Professional Conduct

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

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 in fairness be provided to a customer or client.



Key Points

- Remember, the Rules set *minimum* standards that licensees must comply with; but should aim to exceed.
- The Rules are a reference point for discipline for those who do not meet the minimum requirements.
- 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.
- A prudent, ethical licensee will ensure they maintain a high level of professional conduct at all times, ensuring they do not bring the industry into disrepute.

The meaning of best practice in a real estate industry context

Best practice can be defined as:

'A working method or set of working methods that is officially accepted as being the best to use in a particular business or industry, usually described formally and in detail'.

Cambridge Online Dictionary

The Real Estate Institute of New Zealand (REINZ) and the Real Estate Authority (REA) provide best practice advice for the real estate industry; for example, REINZ best practice guides for tender and auction, or best practice advice provided by the REA in its information sheets and newsletters, in relation to marketing, Anti-money Laundering and disclosure.

Real estate agencies should incorporate best practice information in their internal policies and procedures manuals and incorporate them in to their in-house training sessions.

Following best practice methods helps to ensure licensees not only meet, but exceed, the minimum requirements of the Rules, and, therefore, meet and exceed the expectations of clients and customers.

The meaning of ethics in a real estate industry context

Ethics refers to 'doing what is legally and morally right.'

Note: *Moral ethics* mean 'behaviour customary in our culture or society.' Unit Standard 26152 *Apply knowledge of ethics and industry best practice principles to real estate agency work.*

In a *business context*, ethics 'apply to all aspects of business conduct' and have relevance to 'the conduct of individuals and business organisations as a whole'.

The obligation to act ethically in business principally comes when dealing with ethical dilemmas. That is, meeting legal requirements, going further and balancing 'doing what is right' with making money.

To demonstrate ethical behaviour on an organisational level and to encourage ethical behaviour in their licensees, real estate agencies need to:

- establish and maintain appropriate standards of behaviour and practice in the agency's relationships with relevant stakeholders
- ensure the agency, its licensees, its stakeholders, and its professional colleagues demonstrate respect for the law at all times, together with technical expertise, personal effectiveness, and continuing professional development. Unit Standard 26863 *Demonstrate knowledge of business ethics and corporate social responsibility as they apply to sales professionals*

Note: Stakeholder refers to any person with an interest or concern in the business. In the real estate industry, this would include the board of directors, management, partners, staff, contractors, clients, customers, banks, insurance companies and affiliated professional bodies.

"Whatever is my right as a man is also the right of another; and it becomes my duty to guarantee as well as to possess."

– Thomas Paine, *Rights of Man*

Individual and corporate responsibilities in terms of professional competence and ethics

Professional competence responsibilities

Section 50 of the Act and rule 8.3 state that a real estate agency must provide appropriate supervision of its licensees to ensure they are professionally competent, meet industry standards of professional conduct, and have a sound understanding of relevant legislation (refer rule 8.4).

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

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

Rule 8.4 An agent who is operating a business must ensure that all salespersons 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

Notwithstanding these supervision requirements, **rule 5.2** prescribes an individual responsibility of licensees to have knowledge of the Real Estate Agents Act, regulations, rules issued by the Authority, and other legislation relevant to real estate agency work.

It is important to note that the agency obligation covered under rule 8.4 does not take away the individual responsibility of licensees covered under rule 5.2. Consider this to be a mutual obligation of both agency and licensee to meet the requirements of these rules.

Individual ethics

Licensees, as individuals, will have developed their own moral ethics through the course of their life – these are based on factors including the norms learned from their families and peers, the culture they grew up in, and through learning ethical ‘norms’ from other cultures they have been exposed to through travel, living in different countries and so on.

Corporate ethics

Businesses also develop cultural 'norms' which include expectations relating to ethical behaviour internal to the organisation. These can vary from company to company.

Business ethics are typically set and led by company owners and the senior management team.

While a company's ethics are affected by those individuals' personal ethics, a commitment to meeting legal requirements and following best practice would ensure that the real estate agency meets (and or exceeds) industry requirements.

The real estate agency you are employed by will have developed their own company culture which will include expectations in terms of meeting legal requirements and ethical behaviour.

Prudential ethics

Prudential ethics refers to 'doing the right thing to ensure credibility, transparency, and consumer confidence above and beyond the minimum legal requirements.' Unit Standard 26152 *Apply knowledge of ethics and industry best practice principles to real estate agency work.*

Reputable real estate agencies and licensees committed to prudential ethics go beyond the 'minimum' standard of meeting legal requirements in their efforts to exceed client and customer expectations and to establish an excellent reputation. In return this brings direct benefits to the agency as well, such as building the repeat business and referral rate.

Ethical responsibilities

Real estate agencies have a responsibility to ensure that their company culture and expectations in terms of professional competence, professional conduct, and ethical behaviour are communicated to, and understood by, all licensees who carry out real estate work on their behalf.

They may achieve this, for example, through:

- Documented and clearly communicated organisational policy and procedures that are in accordance with the Rules and other legal requirements
- A commitment to best practice procedures
- Development of fair and supportive workplace relationships
- Continuous and on-going commitment to staff training and support
- Enlisting external consultation or trainers as required

Licenses have a responsibility to ensure that they meet the expectations of the real estate agency. This can be achieved by:

- Making sure you know who your supervising agent or branch manager is and consulting with them about any issues you are unsure of
- Making sure you attend all training sessions and seminars
- Making sure you are familiar with all documented procedures and best practice procedures.

The consequences of unethical behaviour for real estate agencies and licensees

Behaving unethically can result in a number of negative consequences for both the real estate agency and the licensee.

Failing to meet **minimum legal requirements** can result in:

- A complaint being heard by the CAC or Disciplinary Tribunal
- A finding of unsatisfactory conduct or misconduct
- A censure
- A fine
- Negative publicity and damage to reputation
- Loss of licence.

However, just because legal requirements have been met does not necessarily mean that a client or customer will be 100% satisfied with the interaction they have experienced.

Real estate agencies and licensees who are not only committed to meeting their legal commitments but who also practise prudential ethics are far more likely to maintain a competitive edge and avoid negative outcomes such as the ones described below:

- **Dissatisfaction of prospective client, client, or customer**

Real estate agency work is all about one-on-one dealings with a prospective client, client or customer; the 'experience' of the prospective client, client and customer and the flow-on effect, either positive or negative, of that experience in business.

While figures vary depending on source, business research is unanimous that dissatisfied consumers tell far more people about their experience than satisfied consumers. Don't doubt this fact. At the very least, a dissatisfied consumer will certainly not use your services again, nor are they likely to make a recommendation to others to use your services.

- **Loss of repeat business or referral opportunity**

In real estate, the impact consumer perception has on business is well known. Many licensees say that a significant part of their business is based on referrals, so a consumer's positive opinion is of immeasurable worth. A good reputation in business is worth money in the bank.

While repeat business in the real estate industry may have less significance in private sales, retaining the loyalty of investors / developers / commercial clients / customers is also an effective way of ensuring continued business.

These opportunities are far more likely to occur if agencies and licensees not only meet but exceed client and customer expectations. Building trust and rapport improves relationships, and trust and rapport are most easily built by consistently demonstrating ethical behaviour.

- **Negative word of mouth**

Traditional research tells us that a dissatisfied consumer (not industry specific) will talk negatively to up to 15 people about their experience, compared with a satisfied consumer talking to up to 11 people about their positive experience. Some statistics state that after just one negative experience, up to 51% of consumers will never do business with that company again. In today's society with blogs, social media and so on, these figures are vastly underestimated.

For example: according to Facebook, the average user has between 145 and 166 friends. If that user has a negative experience with you or your real estate agency, that person may post a status update posting a public complaint visible to, say, up to 150 friends.

Then think that each of those 150 friends each has on average 150 friends who they may talk with or even share the post with.

Do not underestimate how quickly negative exposure can spread in today's technological environment, especially when you add in the huge cost and emotional involvement in a property sale or purchase which is likely to make an unhappy client or customer even more likely to spread negative word of mouth.

For further reading on this topic you could try: '*Satisfied Customers Tell Three Friends, Angry Customers Tell 3,000: Running a Business in Today's Consumer-Driven World*', P Blackshaw, 2008.

- **Damage to reputation of agency and licensee**

Damaged reputations and loss of confidence in both agency brand and an individual licensee are extremely hard to repair – potential clients and customers will be difficult to engage.

Once an individual or business has been tarred with the brush of unethical behaviour, personal and business reputation take a significant blow, which in some cases, may be so significant it is irreversible.

From an employment perspective, a licensee may find it difficult to find employment or contracts elsewhere, and agencies with a poor reputation may find it difficult to attract high quality staff and contractors.

Professional competence and ethics in relation to fiduciary duty and duty of care

A summary of the key issues relating to fiduciary duty and duty of care that has been covered in other Continuing Education Programme content includes:

- When an agent and client enter into an agency agreement, they are entering into a fiduciary relationship (a relationship based upon utmost good faith)
- This means that the agent (and any licensee carrying out real estate agency work for or on their behalf) has an obligation to act in the best interests of the client and must act with utmost good faith in relation to their dealings with them
- The fiduciary relationship recognises that the agent has knowledge, expertise and skill with respect to their client and are in a position of trust
- There are various duties owed by an agent and licensee to their client (traditionally the vendor or lessor): duties implied by law (fiduciary i.e. to disclose all information that is material to their client); duties expressed in the agency agreement; duties expressed in the Real Estate Agents Act 2008; and, duties expressed in the Rules as well as other legislation, regulations, and other legal requirements
- The client's duties are straightforward: to fully disclose all information material to the agent and licensee, and to abide by the agency agreement
- The customer sits outside the fiduciary relationship between the agent and the client

Full disclosure of 'all things material to the customer' is also required, except confidential personal information of the client (unless permitted in writing) as covered by rule 9.17

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 proceedings against the licensee by the client; or
- (c) the licensee is required by law to disclose the information; or
- (d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.

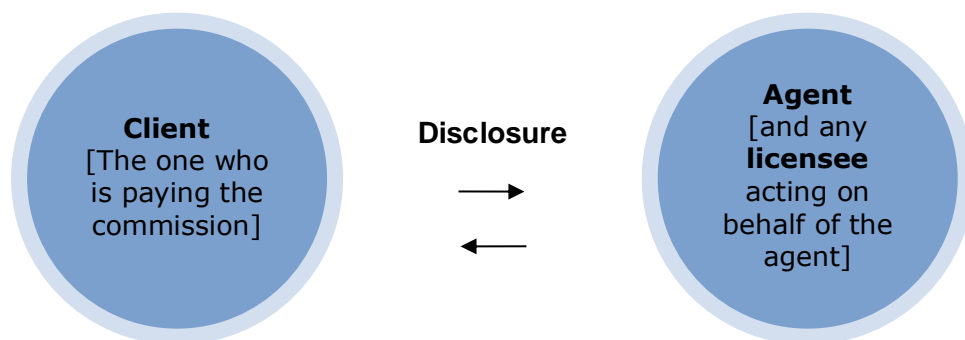
- Remember that certain obligations to your clients continue after the end of the agency relationship. In particular, this means you must continue to keep their personal information confidential and only for the purpose for which it was collected.

A chart summarising the current agency relationship follows on the next page.

An overview of the current agency relationship

A fiduciary relationship exists between the **agent** and the **client**. A **licensee acting 'for and on behalf of the agent'** has the same fiduciary obligations. This relationship is based on the trust, confidence and reliance held by the client with the agent.

The relationship also relies on the obligation of the client to disclose what is known about the property to the agent. The client's obligation needs to be clearly defined within the agency agreement.

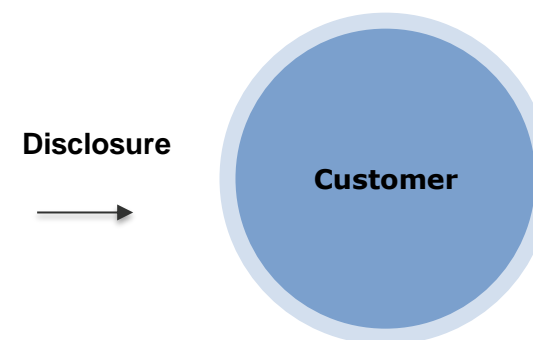


Important rules and legislation (in addition to fiduciary duty):

- Sections 134 – 137 of the Real Estate Agents Act 2008
- Rules 5.1, 6.1 (9.1), 6.2, 6.3, 6.4, 10.7, 10.8
- Rules 9.16, 9.17, 9.18
- Fair Trading Act 1986 (sections 9, 12A, 14, 26A and 36L)

The customer sits outside the fiduciary relationship between the agent and the client.

Full disclosure of 'all things material to the customer' is required, **except the client's confidential personal information** (unless permitted in writing) as covered by Rule 9.17.



Important rules and legislation:

- Sections 136 and 137 of the Real Estate Agents Act 2008
- Section 35 of the Contract & Commercial Law Act 2017 (replaced section 6 Contractual Remedies Act 1979)
- Fair Trading Act 1986 (sections 9, 12A, 14)
- Rules 5.1, 6.2, 6.3, 6.4, 10.7

Appendix

Important note

The Real Estate Authority (REA) is the operating name of the Real Estate Agents Authority (REAA). Please note that this publication uses the legal name 'Real Estate Agents Authority (REAA)' due to a requirement to maintain consistency with legislation.

Appendix 1 – Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012

Contents

Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority (**the 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.

Rules

These Rules make up the Authority code of professional conduct and client care. The Rules were made by the Authority and notified in the New Zealand Gazette. The rules set minimum standards of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients.

1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

2 Commencement

These rules come into force on 8 April 2013.

3 Scope and objectives

3.1 These practice rules setting out a code of professional conduct and client care have been prepared by 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, and 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 party or potential party to a transaction and excludes a prospective client and a client.

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.

regulations means regulations made pursuant to the Act.

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, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

6 Standards of professional conduct

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

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 in fairness be provided to a customer or client.

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 conduct¹ may make a report to the Authority.

7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct² 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 Duties and obligations of agents

Promoting awareness of rules

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.

¹ Unsatisfactory conduct is defined in the Act: see section 72

² Misconduct is defined in the Act: see section 73

8.2 A licensee must make these rules available to any person on request.

Supervision and management of salespersons

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.³

Ensuring knowledge of regulatory framework and promoting continuing education

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.

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.

9 Client and customer care

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 prospective client, client, or customer under undue or unfair pressure.

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.

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

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.

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.

Agency agreements and contractual documents

9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other 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).

³ The Act defines what is meant by a salesperson being properly supervised and managed by an agent or a branch manager for the purposes of section 50 of the Act: see section 50(2)

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.

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.

9.10 A licensee must explain to a 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 1 agent in the event that a transaction is concluded.

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.

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

Conflicts of interest

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

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.

Confidentiality

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.

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 proceedings against the licensee by the client; or

(c) the licensee is required by law to disclose the information; or

(d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.

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.

10 Client and customer care for sellers' agents

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.

Appraisals and pricing

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.

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

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

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

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.

Agency agreements

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.

Disclosure of defects

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 defects⁴, a licensee must either—

⁴ For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not 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 taken into account under rule 10.7.⁴

- (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.

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.

Advertising and marketing

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

Contractual documentation and record keeping

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.

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.

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.

11 Client and customer care for buyers' agents

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 into.

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.

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.

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.

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.

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.

12 Information about complaints

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 consumers.

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

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.

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.

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.

13 Revocation

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (SR 2009/304) are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989. Date of notification in Gazette: 13 December 2012. These rules are administered by the Real Estate Agents Authority, PO Box 25 371, Featherston Street, Wellington