
Real Estate

Continuing Professional Development

Marketing: Professional competence and ethics

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Learning objectives

At the end of this topic, you will be able to:

- state where you must display your agency details and confirmation of licensing
- explain the importance of rule 6.4 – sharing information
- describe conjunctional sales situations
- explain the rules about communication during the agency agreement
- explain the importance of fair and proper processes, versus transaction speed
- describe their duty in terms of security, risk of damage to property and Health and Safety
- explain the importance of the Fair Trading Act 1986 and your requirement to act ethically and not mislead on price
- identify potential P labs and methamphetamine contamination and associated disclosure requirements
- explain disclosure obligations for properties sold 'as is/where is'.

Identifying the real estate agency and confirming your licence

Under section 121 of the Real Estate Agents Act 2008, you must clearly and prominently display your name (and your trading name, if different) and the fact that you are licensed, on:

- each office or shop you maintain
- all websites you use
- all notices and advertisements
- all other promotional material and documents you use in the course of your real estate work
- all letters, accounts, contractual documents and agreements.

121 Agent to display required name information

(1) In this section,—

business, in relation to an agent, means the agent's business as a real estate agent
required name information, in relation to an agent, means—

- (a) the name of the agent and the fact that the agent is licensed under this Act; and
- (b) if the agent's business as a real estate agent is not carried on in the agent's name, the name or style under which that business is carried on.

(2) Every agent must ensure that the required name information is displayed in a prominent place—

- (a) at each office or shop maintained by the agent for the purposes of the business; and
- (b) on every website maintained by the agent for the purposes of the business; and
- (c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and
- (d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business.

(3) The required name information must be capable of being easily read from outside each office or shop maintained by the agent for the purposes of the business.



Note

There have been a number of cases where the individual licensee is properly identified, but not the real estate agency. You must carefully check that all marketing and advertising information in printed and electronic media and all other documents used in the course of real estate work contain the required information.

The importance of rule 6.4 – sharing information

Rule 6.4 confirms the basic obligation not to mislead or act dishonestly in relation to all parties to a transaction.

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.

Decisions made by the Disciplinary Tribunal have highlighted the following important points:

- There is an obligation to disclose all material information, that is, information about a property that is important to the parties and that could affect the decision they make about a transaction.
- Disclosure obligations under Rule 6.4 will depend on the facts of the case. Interpretation of the concept of fairness may differ in relation to the facts and parties involved in different situations.
- A client's knowledge or lack of knowledge does not affect a licensee's duty not to mislead, to not provide false information or to not withhold information. For example, there is no defence that a property developer 'should know' something because of their experience.
- The requirement to make fair disclosure to customers does not exclude the licensee's requirement to act in the client's best interests. A licensee must provide full information to a client about any disclosure he or she believes must be made, and take instruction from the client about the disclosure (for example, disclosure of defects as required by rule 10.7).
- If a licensee considers that disclosure to a customer is required as a matter of fairness, but the client refuses to allow the licensee to make that disclosure, the licensee must explain to the client that disclosure is required. The licensee will have to cease acting for the client if the client refuses to allow the disclosure to be made (refer to rule 10.8).
- There is an ongoing disclosure obligation before settlement. If you discover new information about a property after an Agreement for Sale and Purchase has been negotiated and signed which may affect a purchaser's or lessee's decision to purchase, you must disclose this to the affected party. For example:
 - if you become aware that the purchaser is unable to finalise the purchase, (e.g. due to financial reasons) you must inform your vendor or lessor
 - if you find out that a property has been used as a P lab, you must disclose this information to the purchaser (after prior consent from your vendor or lessor).
- If you have any information that you have not verified, you should disclose that it has not been verified. For example, if the vendor has said there are obstacles to subdivision, but you have not personally confirmed this, you should explain this to prospective purchasers and advise they seek legal advice, and follow up with written confirmation.

Questions to ask yourself to check you are behaving competently and ethically in terms of disclosure are:

- Do you know information about the state or circumstances relating to a property?
- Should you know? Would a reasonably competent licensee be expected to know?
- Would knowing the information likely affect their decision-making? Is the information material to the parties involved in the transaction?

Read the following scenario and answer the questions about the rules. (Refer to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012).

Scenario 1

Vendors laid a complaint with the Real Estate Authority (REA) in relation to the conduct of licensee A who acted as the 'selling salesperson' in the sale of their property which was listed with another licensee (licensee B) from the same agency. The property sold for \$1.048 million.

The complainants entered into an Agreement for Sale and Purchase of Real Estate with purchasers who were related to licensee A (son and daughter-in-law).

Several days after the purchasers entered into the conditional agreement, the complainants entered into a backup agreement with another purchaser (who became the ultimate purchaser - the on-sale purchaser).

After the sale went unconditional, the purchasers experienced a change of financial circumstances that meant they were unable to complete the purchase and were forced to on-sell the property.

Before settlement, an agreement was made for the property to be on-sold, with simultaneous settlement, for a purchase price of \$1.1 million (an additional \$52,000). This sale was arranged directly with lawyers engaged by both parties to the transaction, and no agency commission was paid.

The complainants alleged that licensee A:

- negotiated a small deposit from the purchasers (actual amount equated to 3.3% of the purchase price and coincidentally was almost identical to the amount of commission charged by the agency). This meant there were insufficient funds to meet the complainants' needs (after commission was deducted), and they had to arrange bridging finance for their own property purchase
- was aware of the purchaser' financial difficulties and the on-sale arrangement, but did not inform the complainants of the actual on-sale
- benefitted from a commission from the initial sale
- failed her fiduciary obligations to the complainants (vendors) regarding the deposit and her involvement in the sale of the property to her relatives.

Licensee A defended their conduct, saying they did nothing wrong and had complied fully with the agency in-house policy regarding requirements of section 134 to 137 of the Real

Estate Agents Act 2008. The in-house policy¹ held that “licensees who wish to acquire a client’s property are instructed to approach the client directly and thereafter to commence and control all negotiations.”

Complaint Number: C16220

You can read about this complaint and decision in the REA decision database which you can find at the top of the homepage at rea.govt.nz

A licensee should always recommend that the vendor obtain the standard 10% deposit or at least an amount enough to cover the agency’s commission.

Further relevant comments by the Committee include:

- [para 3.15] ‘Rule 6.1 contains a simple regulatory statement prescribing that a licensee must comply with fiduciary obligations to the licensee’s client. The Court of Appeal held at [47] that the agency policy cannot be regarded as meeting the fiduciary obligations the licensee and the Agency owe to their clients. It follows therefore that the licensee cannot be regarded as having met her fiduciary obligations to the complainants when she engaged in conduct already held by another committee, the Tribunal and the High Court and subsequently by the Court of Appeal to be unsatisfactory. Accordingly, the licensee breached Rule 6.1.’
- [para 3.16] ‘The Committee notes that the licensee could have readily fulfilled her obligations under Rule 6.1. Having identified that the property may have been of interest to her relatives the licensee could have simply passed their interest on to the listing salesperson, her branch manager or another appropriate licensee.’
- [para 3.18] ‘...The matter before us is not one of house-flipping. What is of concern to the Committee is that the licensee knew her relatives were unable to complete the purchase of the property and did not, despite ample opportunity, inform the complainants. The potential financial ramifications to the complainants of the licensee’s relatives not completing the purchase cannot be overstated. We believe that most reasonable vendors in this situation would have wanted to know so that they may take advice and whatever precautionary measures that might be available. The complainants were denied this opportunity by the licensee. That her relatives on-sold the Property before settlement was providential and did not relieve the Licensee of her obligations under Rule 6.4. By withholding information that in fairness should have been provided to the complainants the licensee breached Rule 6.4.’

¹ At the time of the conduct, the agency in-house policy had been the centre of complaints that were heard by a CAC, the Tribunal, High Court, and the Court of Appeal. All judicial bodies ruled that the in-house policy was found to amount to unsatisfactory conduct and a breach of rule 6.1.

Conjunctional sales

A conjunctional sale situation occurs when a real estate agency or licensee cooperates with another real estate agency or licensee to complete the sale or lease of a property, space, or business.

This most often occurs when a real estate agency and licensee advises the listing agency or licensee that they have, or can source, a likely purchaser or lessee.

A formal conjunctional agreement should be completed and signed by both agencies. The agreement should contain detail about terms, commission, disclosure, and arrangements for access.

If another real estate agency or licensee introduces the purchaser or lessee, they will receive a selling fee. The cost to the client-vendor or lessor is the same, as this selling fee comes from a share of the commission agreed to in the agency agreement.

It is important that all licensees involved in conjunctional sales remember who they are working for. Licensees must ensure they act in their client's best interests (rule 9.1) and uphold their fiduciary duty to the client-vendor or lessor as required by law and confirmed in rule 6.1.

The decision on whether (or not) to have a conjunctional agreement must be based on the client's interest, not the licensee's own financial gain. For example, a quicker sale through a conjunctional arrangement may result in reduced personal or financial stress on the client.

Communication with clients during an agency agreement

Marketing and advertising

Under rule 9.6, licensees must have the authority to offer or market any 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.

A licensee should have the written authority of their client (for example, sign-off) for any marketing or advertising material offering a property, land or business before putting any details on any website, distributing flyers or placing a sign on the property.

Rule 9.6 also applies when a property has been sold. When an agency agreement is concluded it is important to make sure that all marketing of the property is removed. This includes all physical advertisements, printed material and any digital advertising.

Failure to remove non-current marketing information is a breach of rule 9.6.

Keep clients informed

Rule 9.3 clarifies that licensees must communicate regularly with clients and keep them up-to-date about material matters unless instructed otherwise by the client.

You must keep records of any client instructions, especially where the client has changed instructions resulting in a different action. These records are important if you need them later to defend the processes you followed.

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.

Never pass on information you are not sure about

It is important to always check facts thoroughly before passing on information that is provided by the client. This will help avoid complaints from clients and customers.

If you don't know or are not sure about, the answer to a question that a client or customer asks you, say so! Suggest an appropriate source that they could use to clarify the information they need. For example, recommend they check with a lawyer or an accredited builder. Consult your supervising agent or branch manager for guidance if necessary.

It is a good idea to follow up any verbal information with written confirmation and clarification, for example by email.

Communicate all written offers

The Rules set out the need to communicate **all** written offers between parties. This means licensees must not filter the information they pass on to the client.

Where the client is a vendor or lessor

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.

Where the client is a purchaser or lessee

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.

Dealing with different situations

Selling, or buying a house is considered to be one of the most stressful times of life. Stressed clients and customers can be demanding to work with, but you should remain professional, calm and courteous in your dealings with all parties when carrying out real estate work.

Stay calm and listen to the person and allow them to speak. Don't argue or return anger with anger. Don't demand that they calm down – this can make things worse.

Every person is unique, and you need to be flexible in de-escalating tough situations.

After a difficult situation, talk to your branch manager or another experienced person about what happened.

Fair and proper processes, versus transaction speed

It is a licensee's responsibility to maintain the momentum of the transaction process.

Placing a certain amount of legitimate pressure on parties may be necessary to meet deadlines. However, you must avoid placing undue pressure or force on clients and customers at any point during the negotiation of the transaction.

This requirement is covered in rule 9.2:

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 9.7 further clarifies that the transaction process must not be rushed or pressured to the extent that parties are unable to consult legal advisors or other specialists for advice.

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).

You may deal with clients and customers who pressure you to complete the transaction as quickly as possible. Do not allow this to compromise your own processes and attention to detail. You must still conduct thorough checks and ensure documentation is accurately completed.

Read the following cases and answer the questions that follow.

Breach example:

Vendors of a property that was listed for sale made a complaint to the REA regarding the conduct of the licensed salesperson. They allege that the licensed salesperson disclosed confidential financial information about the vendors to the purchaser of the property (breach of rule 6.1) and put them under undue and unfair pressure to accept the purchaser's offer for the property, in breach of rules 6.3 and 9.2.

The committee, on the balance of probabilities, determined that the licensed salesperson had disclosed to the purchasers that the complainants were in financial difficulty and had to sell the property.

The licensee was charged with unsatisfactory conduct and the committee ordered censure, continuing education, commission refund of \$10,150.64 plus GST and a \$6,000 fine. Following appeal, the Tribunal reduced the fine to \$4,000 and the commission refund to \$4,000. The orders for censure and CPD remained in place.

Complaint Number: C11489

You can read about this complaint and decision in the REA decision database which you can find at the top of the homepage at rea.govt.nz

[2018] NZREADT 17

Breach example (unsatisfactory conduct)

A licensee's conduct was found to be unsatisfactory by a CAC when he placed a caveat on the property to prevent settlement until the commission was paid to his agency. The Committee found, under section 72(d) of the Act, the licensee's unsatisfactory conduct to be both unacceptable and unprofessional, and in breach of rules 5.1, 6.1, 6.2, 6.3, 9.1, and 9.2.

The licensee was censured and fined \$3,000.

Complaint number: C19562

You can read about this complaint and decision in the REA decision database which you can find at the top of the homepage at rea.govt.nz

Security of land and avoiding the risk of damage

Licencees have a duty to ensure the security of any property, space, or business they have access to when carrying out agency work, for example, when showing a property to potential purchasers or lessees, or conducting open homes.

Licencees must also take steps to avoid the risk of damage when a client or customer accesses a property, space, or business that is not their own.

This responsibility is clarified in Rule 9.5:

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.

The licensee should demonstrate professional competence and ethical behaviour, including making sure:

- to follow client instructions in terms of security, for example, when passing keys to other parties and storage and returning of keys
- all client instructions are clear and recorded in writing
- he or she takes care about maintaining security and avoiding risk when on site showing the property, space, or business
- access to any unsafe area is restricted in line with health and safety requirements
- he or she takes care about storing keys and any access codes in your possession
- any information that could compromise the security of the property, space, or business is not passed on to other parties, for example, security or access codes
- when he or she leaves a property, space, or business that it is secured properly, for example, any alarms are activated, and doors, windows, and gates are locked
- that any concerns about the security of a property are shared immediately with the client.

Health and safety

All work and workplaces in New Zealand are covered under Health and Safety at Work Act 2015 (HSW Act) unless specifically excluded.

WorkSafe New Zealand is the government agency that regulates health and safety in the workplace.

A duty holder is a person who has a duty under the HSW Act. They are specifically:

- PCBU – a person conducting a business or undertaking
- Officers – a person who holds a specific position and who exercises significant influence over the management of a business, for example, company director or chief executive.
 - Officers must exercise due diligence to ensure a PCBU meets their health and safety obligations under the HSW Act.
- Workers - the people carrying out work in *any* capacity for a PCBU, for example, an employee, contractor or sub-contractor.
 - Workers are expected to take reasonable care to keep themselves (and others) healthy and safe when carrying out work.
- Other persons at workplaces, for example, visitors.

A PCBU must ensure, so far as is reasonably practicable, the health and safety of their workers. They must also ensure that the health and safety of other people is not put at risk from work carried out by the PCBU. This is called the 'primary duty of care'.

Under the HSW Act, 'reasonably practicable' action must be taken in relation to health and safety. 'Reasonably practicable' is defined as:

'...that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including:

- The likelihood of the hazard or the risk concerned occurring
- The degree of harm that might result from the hazard or risk
- What the person concerned knows, or ought reasonably to know about the hazard or risk; and ways of eliminating or minimising it
- The availability and suitability of ways to eliminate or minimise the risk; and

After assessing the extent of the risk and available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.'

In practical terms, meeting legislated workplace health and safety requirements means that licensees are responsible for the well-being of any customer taken to, or entering into, a property, space, or business for a viewing, for example, at an open home. It also includes all aspects of safety associated with transporting clients in a vehicle while carrying out real estate duties.

The agent (PCBU) must also ensure that the real estate office premises are safe to enter and to conduct business from.

All of these constitute a 'workplace' and are covered under workplace health and safety legislation.

Licensees must be fully aware of potential hazards at a property, space, or business and ensure that all identified hazards are appropriately controlled and that people are clearly informed of all hazards.

If a hazard is dangerous, clearly the vendor or lessor should remedy this situation before people enter the property.

Hazards that could be relevant include:

- painted concrete that is slippery when wet
- loose mats or carpet squares on polished floors
- damaged, worn or torn carpet
- algae on wooden decking or stairs that cause them to be slippery when wet
- sharp tools in a tool-shed (particularly if children are present)
- broken or missing handrails on a staircase
- unprotected waterways and drains
- trip hazards such as extension cords or appliance cords
- unexpected steps (for example where a building has been extended)
- steep stairs with narrow treads
- contamination hazards, for example, the presence of methamphetamine or suspected contamination
- other hazards, such as slippery surfaces, that are specific to weather and other conditions. Watch for surfaces that provide plenty of grip when dry, but can be hazardous when wet (particularly with some types of footwear).



Key Point

Licensees need to be familiar with their health and safety responsibilities.

Failure to adequately protect clients from harm can have serious negative consequences.

Under health and safety legislation, three offence tiers apply:

1. **Reckless conduct** – fines up to \$3 million (or \$600,000 and/or up to 5 years imprisonment for individuals who are a PCBU or officer of a PCBU)
2. **Failure to comply with a duty (with exposure to the risk of death or serious injury/illness)** – fines up to \$1.5 million (or \$300,000 for individuals who are a PCBU or officer of a PCBU); and,
3. **Failure to comply with a duty (no exposure to death or serious injury/illness)** – fines up to \$500,000 (or \$100,000 for individuals who are a PCBU or officer of a PCBU)

Under the HSW Act, court orders may also be imposed including adverse publicity orders, restoration orders, health and safety project orders and court-ordered enforceable undertakings.

Ethical dealings with other stakeholders

Licensees must not make recommendations to clients and customers about individuals or organisations whose services may be required during the transaction.

Licensees need to remain neutral, for example, about builders or mortgage brokers who may become involved in the transaction process.

Licensees may give neutral professional advice, for example, a licensee can:

- recommend using accredited builders only
- direct clients or customers to industry websites that list several service providers, for example, nocowboys.co.nz for tradespeople
- provide a list of possible providers, as long as there is a reasonable number of options to choose from and no specific recommendations are made from the list.

For advice about professional services such as a reputable mortgage broker, recommend consulting a lawyer.

Licensees are required to uphold all contractual obligations when dealing with other individuals or organisations; for example, licensees cannot deny access to a property, space, or business by building inspectors when required under the contract.

The importance of the Fair Trading Act 1986

It is important that licensees take care to ensure they are not in breach of the Fair Trading Act 1986 when carrying out marketing activities.

This includes representations about the sale of property made by agents, licensees (and developers) all of who are 'in trade'.

- **Section 9** of the Fair Trading Act deals with misleading and deceptive conduct
- **Section 14** deals with false representations and other misleading conduct in relation to land
- **Section 12A** prohibits the use of unsubstantiated representations
 - **Note:** Convictions under sections 12A, 14, 17-22 or 24 of the Fair Trading Act prohibit persons from holding a real estate licence for five years (section 37(1)(b) of the Real Estate Agents Act 2008)

Section 12A applies to representations that a reasonable person would expect to take seriously and be substantiated, for example, advertising a property as a 'home and income', when there is a restrictive covenant preventing this. The key point is that if a licensee makes a statement or representation without making sufficient enquiries to check whether it was true or not, they will fall foul of section 12A of the Fair Trading Act 1986.

The law requires a licensee to make sure they have reasonable grounds for making any statement about a property or business they are marketing before they make those statements.

The provisions of the Fair Trading Act 1986 apply to all types of representations made by licensees about a property, space, or businesses including:

- statements made within marketing brochures, or other written or printed material such as advertisements, letters and so on
- statements made on websites, or in any electronic media
- verbal statements made by a licensee.

Breaches of the Fair Trading Act carry additional penalties for licensees

Breaching certain sections of the Fair Trading Act 1986 means individual licensees now face fines of up to \$200,000, and real estate agencies up to \$600,000. The courts can also grant an injunction and can order corrective advertising to remediate any misrepresentation.

The Commerce Commission is responsible for prosecutions under the Fair Trading Act 1986 and works closely with REA on any matters regarding real estate licensees.

Be aware that licensees can face civil proceedings from clients or customers for breaching the Fair Trading Act 1986 and prosecution by the Commerce Commission.

Misleading price or price range

When licensees provide potential lessees or purchasers with information about the price or price range of a property, space, or business, the information must be true and accurate in terms of the price or price range acceptable to the client-vendor or lessor.

This requirement is covered in rules 6.4, 9.4 and 10.4:

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.

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

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

To reduce the risk of breaching rules 6.4, 9.4 and 10.4 and sections 9 or 14 of the Fair Trading Act 1986 you must:

- carefully check all printed and digital marketing and advertising information to make sure any reference to a price or price range is true and accurate - this includes any online search range
- avoid giving an inaccurate or untrue price or price range verbally
- avoid an unrealistic focus on the rateable value (RV). The relevance of RV in terms of reflecting a true market value must be approached with caution. You should not use RV in any advertisements where it does not realistically reflect market value.

P labs and methamphetamine contamination

In May 2018 the Prime Minister's Chief Science Advisor, Sir Peter Gluckman, released a report which found no evidence of health risks from third-hand exposure to methamphetamine (meth) smoking residues on household surfaces.

REA has guidance on its website based on the findings of the Gluckman Report.

It is important to understand the following licensee disclosure obligations:

- Methamphetamine contamination of 15 micrograms per 100cm² or above is considered a property defect that must be disclosed to potential buyers (rule 10.7 of the Professional Conduct and Client Care Rules 2012).
- You do not have to disclose test results below 15 micrograms per 100cm² unless specifically asked by a prospective buyer or where a prospective buyer has clearly shown an interest in methamphetamine contamination (rule 6.4 of the Professional Conduct and Client Care Rules 2012).
- Disclosure is not required where:
 - methamphetamine has only been used at the property, and the property has been successfully remediated back to below 15 micrograms per 100cm² or
 - methamphetamine has been produced or manufactured at the property, and the property has been successfully remediated back to below 1.5 micrograms per 100cm².
- **You should discuss the issue with your vendor before making any disclosures.**
- A property that tests below 15 micrograms per 100cm² is considered safe to live in, with no adverse health effects.
- The report said there was little reason to test a property for methamphetamine contamination unless there was a strong suspicion that it had been used for methamphetamine production or there had been very heavy use.
- The report found no evidence of adverse health effects from third-hand exposure to methamphetamine smoke residue on household surfaces below 15 micrograms per 100cm².
- Methamphetamine that is inhaled or absorbed through the skin leaves the body within about a day. Residual levels on household surfaces also diminish over time, so a person is not exposed to a constant dose every day.
- The level of 15 micrograms per 100cm² still includes a large safety buffer.
- If your clients have questions about methamphetamine contamination, direct them to the information on settled.govt.nz.
- The report also found that there was little need to test for methamphetamine contamination unless there was strong suspicion or information from Police or

forensic experts that a property had been the site of production or heavy use of methamphetamine.

- If a vendor or prospective buyer wants a property to be tested, it is important to make them aware that the methamphetamine testing industry is not currently regulated in New Zealand. The report notes that composite field testing, where multiple samples taken throughout a property are combined into a single sample, can lead to false impressions of high levels of contamination. This type of testing is not recommended.
- Remediation back to 1.5 micrograms per 100cm² is only required where the property was used for methamphetamine manufacture involving solvents and other toxic chemicals, as the methamphetamine reading is used as the marker for these other toxic chemicals. These chemicals are not usually used in methamphetamine production now.
- Remediation to below 15 micrograms per 100cm² is required for a property where only methamphetamine use took place.
- The new guidance and the findings in the report do not alter decisions already made by Complaints Assessment Committees or the Real Estate Agents Disciplinary Tribunal (READT).

Source: rea.govt.nz

If you suspect that a property, space, or business has previously been used as a P lab

It is difficult to tell if a property, space, or business has been used for methamphetamine production. If Police are aware of a P lab, they will inform the local council. If not, the council will not know unless the property owner has approached them.

Councils may issue a cleansing order or a dangerous building notice until it has been cleaned and re-tested. Some authorities add a permanent notification on a LIM report. Other authorities remove the notice when decontamination has been completed. Property file searches will hold a permanent record if one was created.

More information is available at settled.govt.nz – just search on 'meth'.

There is also more information on the New Zealand Police website:

<https://www.police.govt.nz/advice/drugs-and-alcohol/methamphetamine-and-law>

'As is/where is' provisions do not negate disclosure obligations

'As is/where is' means that a vendor is selling, and a purchaser is buying property or land in whatever condition it represents at the time of signing a contract. The purchaser is accepting all present faults.

Examples of where 'as is/where is' provisions may typically be used include property or land that:

- is sold in a mortgagee sale
- needs extensive or significant repair
- has illegal occupants
- has issues with title and non-complying structures
- has issues associated with its zoning or locality
- has issues of uncertainty associated with the title and compliance, for example, remediation following earthquake damage.

Under an 'as is/where is' arrangement, any costs related to fixing any of these problems (unless negotiated differently) are the purchaser's responsibility.

However, the 'as is/where is' provision does not negate a licensee's disclosure obligations under rules 6.4 and 10.7. If a licensee is aware or should be aware of anything that may be material to a prospective purchaser, that information needs to be fully disclosed before the sales and purchase agreement is signed.

Potential purchasers interested in property or land for sale 'as is/where is' should be actively encouraged to carry out their own due diligence.

Any verbal advice given should be followed up with written confirmation and clarification, for example, email.

In a sale and purchase agreement, the standard vendor warranties would be crossed out.

Licenses are also reminded of their obligations to comply with rule 10.8:

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