
Real Estate

Continuing Professional Development

Pre-listing: Supplementary reports and documentation

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Contents

Real Estate CPD - Pre-listing: Supplementary reports and documentation, covers the following information:

Learning objectives.....	3
Information and reports from other sources.....	4
Conflicting reports and how to deal with them.....	10
Issues with passing on un-verified information	10
Issues with disclaimers.....	11
LIM report extract examples.....	14
Example 1.....	14
Example 2.....	15
Example 3.....	16
Example 4.....	17

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Learning objectives

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

- identify the types of key documents that the vendor may give you, for you to provide information to prospective purchasers
- explain your role in explaining information on documents and when to refer for specialist advice
- explain how to deal with conflicting reports and un-verified information
- identify key information from LIM reports.

Information and reports from other sources



Note

Records of title and Land Information Memoranda (LIM) are covered in detail in other CPD topics.

This topic does not cover Records of title or LIMs in any detail but includes exercises on interpreting LIMs.

Licensees must know about the supplementary documents used in real estate transactions and understand their content and relevance to the real estate sector they work in.

Licensees must also know and understand their legal and fiduciary obligations when disclosing material documentation, as set out in rule 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (also referred to as 'the rules' or 'the Code of Conduct').

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.

Many of these supplementary documents are specific and technical. Licensees working in specialist areas are expected to understand and explain the implications of technical documentation and reports. If you do not understand any part of a document, for example, an extract involving issues of uncertainty or complexity, you should ask for guidance from your supervising agent or branch manager. If the issues of uncertainty and complexity are beyond the expertise within the agency, prospective purchasers should be advised accordingly.

Licensees should explain the aspects of a report that are understood, draw attention to the matters which are beyond the agency's expertise, and recommend that the prospective purchaser seek independent legal or technical advice. Follow up the verbal explanation in writing by email.

Licensees must disclose all available material documentation, and parties are advised to seek independent legal or technical advice before entering into a transaction, as required in rule 9.7.

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).

The table below summarises some of the key documents that may be made available to licensees to provide to prospective purchasers by way of Information Memoranda. Refer to the table to answer the questions that follow.

Information / report	Residential	Rural Life-style	Commercial	Business broking
Record of title	Yes	Yes	Yes	
Land Information Memorandum (LIM) report	Yes	Yes	Yes	
District, regional and unitary plans	Yes	Yes	Yes	Yes
Resource consent (land use, subdivision, water discharge and coastal)	Yes	Yes	Yes	Yes
PIM (Project Information Memorandum) report	Yes	Yes	Yes	
Valuation by registered valuer	Yes	Yes	Yes	
Valuation by an independent qualified statutory accountant				Yes
Code compliance certificate	Yes	Yes	Yes	
Certificate of acceptance	Yes	Yes	Yes	
Safe and sanitary report	Yes	Yes	Yes	
Independent inspection report (eg. waterway contamination)	Yes	Yes	Yes	
Building inspection report	Yes	Yes	Yes	
Engineering report	Yes	Yes	Yes	
Geo-technical report	Yes	Yes	Yes	
Electrical safety certificate	Yes	Yes	Yes	
Gas safety certificate	Yes	Yes	Yes	
Contaminated land (Listed Land Use Hazard Register)	Yes	Yes	Yes	
Contamination report / Contamination remediation report (e.g. methamphetamine)	Yes	Yes	Yes	

Information / report	Residential	Rural Life-style	Commercial	Business broking
Building plans	Yes	Yes	Yes	
Producer statements	Yes	Yes	Yes	
Repairs and maintenance records	Yes	Yes	Yes	
Farm advisors report		Yes		
Farm, dairy and environmental reports		Yes		
Resource consent certificate (water)		Yes	Yes	
Environmental and implementation plan		Yes		
Fertiliser reports		Yes		
Effluent reports and system plan		Yes		
Land use consent		Yes		
Water compliance certificate		Yes		
Supplier management reports		Yes		
Soil analysis test reports		Yes		
Nitrogen baseline standard		Yes		
Overseer report		Yes		
TB status declaration		Yes		
Carbon credits statement		Yes		
Vendor's hazard register – site hazards		Yes		
Production details (horticulture, pastoral, cropping)		Yes		
Dairy company confirmation of shareholding		Yes		
Dairy company confirmation of production		Yes		
Building warrant of fitness			Yes	Yes

Information / report	Residential	Rural Life-style	Commercial	Business broking
Tenancy schedule and operating expenses budget			Yes	
Deed of lease, including variations, assignments, rent reviews etc.			Yes	Yes
Management agreement			Yes	
Detailed property description			Yes	
BOMA measure and site plans			Yes	
Final architects/as built plans	Yes	Yes	Yes	
Building services drawings			Yes	
Seismic reports <ul style="list-style-type: none"> - Initial Evaluation Procedure (IEP) - Detailed Engineering Evaluation (DEE) - Detailed Seismic Assessment (DSA) 	Yes	Yes	Yes	
Moving turnover report (MAT)			Yes	
Financial statements		Yes		Yes
GST returns				Yes
Liquor license				Yes
Food Control Plan (FCP) or National Programme (NP) License				Yes
Franchise agreement				Yes
Employment agreement (sample)				Yes
Schedule of plant and equipment				Yes

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

A complaint was made against a licensee who listed a rural property for sale.

The complainant made an inquiry in response to a Trade Me advertisement for vacant land. Marketing material showed the boundary of the land as being the fence line, with the words "*boundary lines are indicative only*".

The licensee sent an illustrated geo-technical report that showed the correct boundaries, a site plan and a sale and purchase agreement to the complainant. The reports referred to a possible building site situated approximately mid-level on the section, which was irregularly-shaped, sloping land.

The complainant and her husband met the licensee on site to inspect the property. The licensee showed them the proposed building site which was located lower down the hill on the section, as referred to in the reports.

The complainants and licensee discussed alternative building sites, and the licensee led the complainants to an alternative site at the top of the block where they could get the views they wanted. The licensee was asked to clarify the boundaries of the property, and he informed the complainant that the fence located on one side of the property was on the boundary, and that they could build anywhere on the section.

The licensee prepared a sale and purchase agreement which included a ten-day due diligence provision to allow the complainant time to seek advice about the suitability of the preferred building site. The licensee helped the complainant locate a builder who checked the geo-technical reports and confirmed they could proceed with the building.

The sale and purchase agreement went unconditional and was settled, building plans were drawn up, and the complainants paid a \$60,000 deposit to the builder.

Approximately four months later the builder advised the complainants that the fence line was not the boundary. "*The true boundary was on the other side of a paper road not included in the section but running alongside it*". The preferred building site was "*too close to the paper road for the local authority to agree to construction at that position*"¹.

The complainant alleged that at no time did the licensee inform them about the presence of a paper road. This was confirmed by the licensee. In his response to the investigation, he stated that he "*did not draw to their attention the existence of a paper road along the fence line next to the property... as he did not think it would affect them*".

The paper road was clearly shown on the survey plans attached to the information the licensee initially sent to the complainants.

The complainants have not been able to recover the deposit they paid the builder and say they would not have purchased the section if they had known about the true position of the boundary and the existence of the paper road.

Complaint number: C17280

¹ Building line restrictions specify that buildings are not allowed to be situated within a certain distance of the centreline of the road or the road boundary.

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



Note

The complainants also alleged that the licensee was not properly supervised. Another licensee, licensee B, who was a licensed salesperson, acted as the 'first point of contact for salespeople and referred issues to the licensed agent and compliance manager'.

Licensee B and the agency were joined in the investigation as part of this complaint and the Committee noted that Licensee B was not qualified to provide supervision. Licensee B and the agency were also found guilty of unsatisfactory conduct. The Committee stated that 'this is an instance in which arm's length supervision has proven unsatisfactory' [para 3.28].

Note the following comments from the Committee:

para 3.15] 'The licensees agree that [the] licensee misled the complainant as to the location of the boundary, but say that because the boundary was correctly depicted in some of the material provided to the complainant (the title and geo-technical report), that the words "boundaries are indicative only" appeared on marketing material (which the complainant may not have seen), and that the ASP included a due diligence condition, the complainant should be responsible for undertaking investigations and the licensee should not be held responsible for the complainant being misled as to the correct boundary'.

[para 3.17] 'The Committee does not accept that the provision of the documents referred to [the geo-technical report and site plan] and the inclusion of the due diligence clause in the ASP excuses the licensees from their basic responsibility to know what they are selling, which includes identifying the boundaries and any other important matters which might affect a property'.

Conflicting reports and how to deal with them

Sometimes a licensee may receive or become aware of, conflicting reports relating to a property, for example, conflicting information may be presented in different building inspection reports or seismic reports.

Licensees are not expected to be experts in interpreting or advising customers or clients on the implications of information in specialist or technical reports, but they are required to disclose information they know about.

Licensees are expected to be able to recognise when something might be an issue (be 'material') and recommend that the client or customer seek independent legal or technical advice before entering into a transaction.

Issues with passing on un-verified information

Licensees must always ensure that information they pass on is properly verified. This means information provided to prospective purchasers must be current, authoritative, relevant and able to be corroborated.

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 2

A section of bare land created by the subdivision of a larger block was being marketed by licensee A as having access by a granted Right of Way Easement.

The neighbour, who had granted the easement to the original block of land, contacted licensee A, advising in writing that there was an unresolved dispute as to whether the easement applied to the subdivided land, or was limited to the original block of land. This advice was also contained in a letter from the neighbour's solicitor to licensee A.

The neighbour wanted to ensure that any prospective purchasers of the vacant land were made aware of the dispute.

The salesperson advised her branch manager (licensee C) about the dispute.

The matter was discussed with the vendor who gave an assurance that the easement from the neighbour providing access to the vacant land could not be legally challenged, based on advice from a surveyor engaged by the vendor, and the vendor's solicitor.

On that basis, the licensee A and her branch manager decided not to disclose the dispute to prospective purchasers or include any reference of the dispute on the agency listing file.

A new salesperson, Licensee B introduced the property to the purchaser after it had been passed in at auction. Licensee B was not aware of any dispute.

The purchaser of the property did not become aware of the dispute until one month after settlement when he was visiting the land. The neighbour approached him and advised him that, if he used the driveway he would be trespassing.

The neighbour complained to the Real Estate Authority about the conduct of the licensed salesperson over the handling of the dispute.

It later transpired that part of the reason for non-disclosure was that the licensee A believed that disclosure of the dispute would have scared off potential purchasers.

During its investigation, the CAC considered the complaint raised concerns about supervision and decided to inquire into the conduct of the supervising licensee – licensee C, the branch manager.

The Committee decided to take no further action against licensee B, and noted:

[para 2.5] 'The Committee accepted [the] licensee had no knowledge of the dispute and no disciplinary issues regarding him were identified in the course of the investigation.
The Committee noted that [the] licensee had been let down by licensee A [licensed salesperson] and licensee C [branch manager] in their decision to not inform him of the dispute.
This has placed him in a situation that should not have arisen and has no doubt caused him stress and uncertainty at a very early point in his career.'

Complaint number: C13552

You can read about this complaint, the decision and Tribunal finding ([2017] READT 40) in the REA decision database which you can find at the top of the homepage at rea.govt.nz

Issues with disclaimers

It is important that agencies and licensees understand that disclaimers in contractual documents do not negate their disclosure obligations, or any of their other obligations under the Real Estate Agents Act 2008 or the Rules.

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 3

Two licensed salespersons were involved in the marketing of a residential property. The agency they were engaged by had obtained a LIM from the council. The LIM for the property was addressed to the agency, not the vendor.

The marketing and advertising material stated: "Potential exists to use your imagination to use the huge space downstairs to your advantage".

A prospective purchaser viewed the property and was told by the licensees that there was potential for two or three bedrooms in the basement area.

The licensees provided a copy of the LIM to the prospective purchaser but failed to highlight anything of significance within the report.

At no time did the licensees advise the prospective purchaser to seek independent legal or other advice.

Before entering into a sale and purchase agreement, the prospective purchaser was informed that he was in a multi-offer situation. He was requested to sign a form provided by the licensees which referred to the "potential for a multi-offer". This form was inconsistent with the agency's multi-offer form and was also inconsistent with the requirement for an offer to be in writing before a multi-offer situation exists.

The prospective purchaser was unaware of the inconsistencies and duly signed the multi-offer form and proceeded to make a written offer in the belief that he was a multi-offer situation.

After the initial offer was prepared, the prospective purchaser had further discussions with the licensees and was advised to increase his offer by \$15,000 before it was presented to the vendor. The offer was increased accordingly, presented to the vendor and accepted.

The sale and purchase agreement later became unconditional and was settled.

After moving into the property, the purchaser experienced flooding in the basement area and subsequently found that the property was located in a flood zone which was identified on the LIM.

The purchaser complained to REA because the licensees had not disclosed the flood zone entry noted on the LIM.

The licensees were adamant that the prospective purchaser had been verbally informed of the flood zone issues. However, no written record, for example, file notes or diary notes, of such a discussion was provided by the licensees to substantiate this.

Complaint number: C20306

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

Additional facts:

The licensees told the prospective purchaser that it was a multi-offer situation when it was not. The licensees also told him there was a back-up offer when there was not.

The prospective purchaser was not allowed to review or reconsider his offer in light of these facts.

Note the following comment from the Committee:

- [para 3.7] 'The licensee has not provided any file notes or diary notes recording advice they gave to the complainant at any relevant time. They have not provided any documentary evidence of following up verbal advice they say they gave to the complainant, in writing...'
- [para 3.26] 'By failing to advise the complainant of the risk of flooding disclosed in the LIM report (and to red flag it for him) before signing the sale and purchase agreement, the licensees have not dealt fairly with him, have failed to provide information which in fairness should be provided to a customer, and they have failed to exercise proper skill, care and competence.'



Key message

A key message from this case is that the CAC found that it is not enough for a licensee to pass on a LIM report if they have a copy. A licensee is expected to have read and understood a LIM report, and highlight any material information that may be relevant to a prospective purchaser.

LIM report extract examples

Refer to the following examples of extracts from LIM reports and answer the questions for each example.

Example 1

Extracts from Land Information Memorandum – Example 1

Building Permits

Issued Permits

Application Number	BPM-15371
Decision Date	15-Oct-1971
Status	Building Permit Approved
Description	Re-erect Dwelling (Second-hand Building). 15371

Application Number	BPM-46728
Decision Date	04-May-1984
Status	Building Permit Approved
Description	Spa Pool Addition B046728

Building Consents

Application Number	BA-1229324
Application Description	Connect existing houses to stormwater connections and provide surface drains to existing drive to complete subdivision
Date Consent Issued	26 February 2007
Status	CCC Issued

Application Number	BB-1237794
Application Description	New two storey dwelling and retaining wall
Date Consent Issued	8 January 2010
Status	CCC Issued

Example 2

Extracts from Land Information Memorandum

Status of Requisition or Notice

Application Type	Number	Description	Application Status
Requisition	REQ-2001-731	Unauthorised Building - Basement Garage Made into Habitable Rooms - works declared sound refer WCC letter 8/11/01.	Satisfied

The following Building Permit and Consents have been lodged on this property.

Permit/Consent	Number	Type of Work	Status
Building Consent	ABA-2006-2206	Heater installation /solid fuel heater	CCC Issued
Building permits pre 1/07/1992	BPM-1985-27406	Dwelling	Issued
Building permits pre 1/07/1992	BPM-1987-32674	Addition to Dwelling - Deck	Complete

Example 3

Extracts from Land Information Memorandum – Example 3

Recorded Buildings and Structures on this Property

Building Consents

Note: **BC Granted** means Building Consent Granted
CCC means Code Compliance Certificate
No Decision in the decision column means that the application is still being assessed by Council.

Number	Date lodged	Description	Decision	Date CCC issued
ABA-970219	03-Feb-1997	New Carport	BC Granted 10-Feb-1997	18-Mar-1998

Building Permits issued prior to the Building Act 1991

The Building Act 1991 came into force on 1 July 1992 and replaced the existing Building Permit regulations. Under the Building Permit regulations, Code Compliance Certificates were not required and there was no requirement for Council to keep or provide records of building work. Whilst council generally does hold records of Building Permits issued, often little or no information is available regarding building inspections. The absence of a recorded "final" inspection should not be regarded as a requisition against the property.

Number	Date issued	Description	Final Inspection
BPA-37768	17-Oct-1978	Resite Second Hand Home	14-Aug-1980

Number	Date issued	Description	Final Inspection
BPA-37784	19-Oct-1978	Resite 2nd Hand Glasshouse (Cancelled)	

Number	Date issued	Description	Final Inspection
BPA-77434	30-May-1984	Fireplace	

Example 4

Extracts from Land Information Memorandum

Building Consents

Application Number	BB-1226640
Application Description	New two level dwelling; swimming pool(fibre glass)
Date Consent Issued	12 December 2008
Status	Cancelled

Application Number	BB-1240779
Application Description	New two level dwelling, swimming pool, and fireplace
Date Consent Issued	4 May 2011
Status	CCC Issued

Application Number	BP-1240779/A
Application Description	New deck
Date Consent Issued	17 September 2015
Status	Refused

Swimming Pool / Spa Pool Fencing Compliance

Pool/Spa Licence Number	SWP-9614
Licence Status	Pool Complies

The current status of this Compliance could change due to Lim re inspections being undertaken