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# Real Estate

## Continuing Professional Development

**Sale & purchase agreements and lease agreements:  
Professional standards**

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## Learning objectives

- Understanding sale and purchase agreements and lease agreements
- Understanding ethical responsibilities and obligations of a licensee
- Maintaining communication with the client
- Presenting and recording offers
  - In house agency requirements
- Understanding sale and purchase agreements – the process from offer to settlement
- Understanding lease agreements – the process from offer to settlement
- Understanding multiple offers, including:
  - Legal obligations with multiple offer situations
  - Privacy issues
  - Important considerations in multiple offer situations
  - Administration process
  - Backup offers
- Holding deposit as stakeholders
  - Third party trust accounts
- Anti-money laundering
  - Prescribed transactions
  - Suspicious transactions
- Understanding unit title requirements
  - Identifying a unit title property
- Understanding loan to value ratios
- Understanding property taxation provisions, including:
  - Brightline test – extended
  - Completion of the land transfer tax statement
  - Implications for licensees
- Changes to the Overseas Investment Act 2005

## Sale and purchase agreements and lease agreements

In this topic we will look at licensee responsibilities associated with sale and purchase agreements and lease agreements (the agreement) with reference to professional standards whilst carrying out real estate agency work.



### Note

For the purpose of this Continuing Professional Development (CPD) material we will look at lease agreements for commercial and industrial space (governed by the Property Law Act 2007) and all licensees being accountable under the Real Estate Agents Act 2008 and the Real Estate Agents (Professional Conduct and Client Care) Rules 2012 (the Rules).

We will not look at residential leases (governed by the Residential Tenancies Act 1986).

Legal and contractual requirements of sale and purchase agreements and lease agreements are covered in a different topic.

### Ethical responsibilities and obligations of the licensee

When facilitating sale and purchase or lease agreements for the sale or lease of a property, space, or business, certain ethical responsibilities apply when dealing with clients and customers entering into the agreement.

When discussing ethical responsibilities, it is important to remember that these are now embodied within the rules (refer Appendix 1), which reflect minimum standards that licensees must meet to demonstrate professional competence.

Notwithstanding, these rules are also used when responding to compliance or complaint issues within the real estate industry. The rules that cover professional standards include:

- standards of professional competence (rules **5.1 & 5.2**), and
- standards of professional conduct (rules **6.1 to 6.4**)

Each of the rules above begins with the words 'A licensee must...'; hence the heading: Ethical responsibilities and obligations of the licensee.

In addition to the rules that set out standards of professional competence and conduct, rules within **section 9: Client and customer care**, are also relevant, including:

**9.2** A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.

For example, licensees must avoid creating an unreasonable sense of urgency that impacts on a client or customer's ability to think clearly about the agreement and that prevents them from having enough time to seek appropriate legal or technical advice (refer 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).

For example, licensees must ensure parties to the agreement are informed of their right to seek [*recommend that the person seek legal advice, or ensure a person is aware that he or she can, and may need to, seek technical or other advice*] independent advice, and given a reasonable time to obtain such advice.

Failure to do so may put a prospective client, client, or customer under undue pressure [breach of rule 9.2] and could lead to a complaint.

**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.

For example, do not allow clients or customers to sign documents while under the influence of drugs or alcohol.

Advise someone who is clearly having problems understanding relevant documents (such as a very elderly person who seems confused, or a stressed landlord desperate for a tenant) to seek the additional advice they may need, ensuring further compliance with rule 9.7.

## Maintaining communication with the client

**Rule 9.3 client and customer care – general** requires that licensees keep the client suitably informed of material matters throughout the sale and purchase or lease process unless otherwise instructed by the client.

**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.

For example, a client with a long-term general agency may only wish to be contacted if a potential purchaser or lessee has expressed interest in the property, space, or business.

To ensure proper understanding of the client's expectations, in accordance with best practice, it is recommended that you obtain the client's instructions in writing or make a diary or file note of their instructions.

Read the following scenario and consider if the licensees have breached the Rules (refer Appendix 1).

## Scenario 1

Parties involved:

Complainant – unsuccessful purchaser  
 Licensee - Salesperson X  
 Licensee 1 – [supervising] agent licensee  
 Licensee 2 – salesperson licensee

Chronology of events (quoted directly from the CAC document):

Date/Time	Event
24 March 2017	<p>Complainant asks Licensee Salesperson X to make enquires about the Property.</p> <p>Salesperson X contacts Licensee 2 (salesperson licensee) to ask whether any offers have been made for the Property.</p> <p>Licensee 2 says there are no current offers for the Property.</p> <p>Complainant submits an offer for the Property.</p> <p>Licensee 2 acknowledges receipt of the offer.</p>
25 March 2017	<p>Licensee 2 phones Salesperson X to say vendor has counter offered.</p>
26 March 2017	<p>The Complainant submits an increased offer via Licensee 2.</p> <p>Licensee 2 contacts Salesperson X around 9.20pm to advise the Complainant's increased offer has not been accepted and advises the vendors have accepted a competing offer.</p> <p>Salesperson X contacts the Complainant to explain the situation. The Complainant expresses his concerns around not being notified of a multi-offer situation.</p> <p>Salesperson X phones Licensee 2 to relay the Complainant's concerns. Licensee 2 tells Salesperson X she will get Licensee 1 to phone her and hangs up.</p> <p>Licensee 1 (agent licensee) phones Salesperson X and tells her Licensee 2 is upset, admits a mistake has been made and suggests he will phone Salesperson X's manager in the morning.</p>
27 March 2017	<p>Complainant meets with Licensee 2 at the Agency. Licensee 2 becomes upset and leaves the meeting.</p> <p>Complainant meets with Licensee 1 (agent licensee) and Salesperson X. Licensee 1 tells the Complainant he can submit a back-up offer as the other offer is conditional.</p>



Date/Time	Event
	Licensee 1 contacts the Complainant to tell him his back-up offer has been accepted by the vendor.
28 March 2017	Vendor's lawyer confirms receipt of a back-up offer to the purchaser's lawyer.
31 March 2017	Salesperson X phones the Complainant to advise the competing offer has gone unconditional and his back-up offer is at an end.
12 April 2017	Letter of apology sent to Complainant from Licensee 1. Complaint accepted by authority. Related case CXXXXXX from Salesperson X accepted by the Authority (redacted from CAC document).
12 July 2017	Salesperson X and her colleague agree to have their complaint added to this complaint and to be named as witnesses for this complaint.  Licensee 1 and Licensee 2 have responded to the complaint and agree with the Complainant's version of the events and advise: a) They accept that a mistake was made in relation to the multi-offer, but that there was no dishonesty involved.

**Complaint number: C19762**

You can read more about this decision through the 'Search complaints decisions' link at [rea.govt.nz](http://rea.govt.nz)

## Key issues confirmed with Complainant

- [para 1.8] 'Issue 1: Whether Licensee 2 failed to act with skill and care when the Complainant engaged in negotiations to purchase the Property by failing to advise him or Salesperson X when the Property became subject to multi-offer.
- [para 1.9] 'Issue 2: Whether Licensee 1 misled the Complainant by telling him his back-up offer was valid when Licensee 1 may have already have known the conditions of the original offer had been satisfied.'

The response from Licensee 1 [the Supervising Agent] in relation to Issue 1 included the following comments:

- [para 1.10] 'a) it was an unfortunate situation where my salesperson made an error;  
b) attempts were made to rectify the situation by getting the purchaser to submit a back-up offer, which was not successful'

The response from Licensee 2 in relation to Issue 1 included the following comments:

- [para 1.11] 'e) she received an offer [second offer] via email at 5.30 pm from a buyer who had attended the open home earlier that day. It was an offer of the asking price of \$529,000 subject to finance, builders and LIM;  
f) she did not tell Salesperson X about another offer, and did not ask her to complete a multi-offer form; and  
g) she admits her mistake and is very sorry.'

## Presenting and recording offers

In accordance with Rule 10.10, licensees must present all written offers to the vendor or lessor client for their consideration.

**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.

Key points about this rule:

- 10.10 aims to ensure that clients are aware of all **written offers** and therefore have the opportunity to consider them, rather than the licensee filter information and not report all offers to the client
- **Verbal offers** are not binding and should be actively discouraged. They can indicate an intention but are meaningless unless put into writing. Licensees are not obliged to submit verbal offers to their clients. However, any interest expressed in a property which a licensee considers may be material to their client must be fully disclosed.

Precedent case: [2014] NZHC 2664 Maketu Estate v Robb & PGG Wrightson

<http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2014/2664.html>

- This case concerns claims under the Fair Trading Act 1986 and centres around the Plaintiff (the Client) allegation that:
  - The Licensee failed to disclose a third party's level of interest in purchasing the property and wrongly advised the third party that the orchard (a kiwifruit orchard valued at around \$4.9 million) was no longer available for sale whilst in the middle of active sale negotiations with another purchaser
  - The agency breached their fiduciary duty by failing to disclose the existence of another potential purchaser
  - High Court statement [para 13] 'Not all breaches of duty by a fiduciary are breaches of his or her fiduciary duty. The breach must involve an element of infidelity or disloyalty that engages the fiduciary's conscience. The agent must have made a profit from the transaction, acted in a conflicted position or otherwise have acted in bad faith'
- The court found the Licensee guilty of misleading or deceptive conduct and a breach of his fiduciary duty to his Client
- Judgment in favour of the plaintiff in the sum of \$1.1 million
- Agency not entitled to a commission
- Written offers become a binding contract as soon as they are accepted by the other party, and acceptance is conveyed to the offeror
- The focus on written offers also means that details and conditions are clearly documented

Following this High Court decision, the Tribunal found the licensee guilty of misconduct based on a willful breach of rules 6.4 and 9.1.

<http://www.nzlii.org/nz/cases/NZREADT/2017/39.html>

### In-house agency requirements

Rules 10.11 and 10.12 require licensees to also communicate information about written offers submitted to clients to the real estate agency.

The real estate agency must keep records of all written offers submitted by themselves and/or their licensees for a period of 12 months.

**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.

## Sale and purchase agreement - the process from offer to settlement

Purchaser makes an offer to buy the property, space, or business.



Licensee draws up a sale and purchase agreement and asks the purchaser to initial and sign it. Under Section 132 of the Act, the licensee must give the purchaser a copy of the signed document as soon as practicable.

The licensee needs to meet requirements of Rules 9.7, 12.1, 12.2, 12.3 and prior to signing, ensure accuracy with verifying the identity of all signatories, obtaining appropriate authorisation documentation if relevant [for example - a power of attorney requires a Certificate of non-revocation; an enduring power of attorney requires a Certificate of non-revocation and non-suspension of the enduring power of attorney; a trustee requires a trust deed; a company director requires written authority to sign from Company Directors or company rules or a shareholder agreement; an executor of an estate requires a grant of probate].

If it's a residential property sale... New Zealand Residential Property Sale and Purchase Agreements Guide is given to the purchaser and a signed acknowledgement of receipt is obtained.

Residential Land Statement completed confirming eligibility to purchase.



The offer is presented to the vendor who can consider the offer (the amount offered, and any conditions attached etc).

Vendor makes a decision whether to accept the offer, or not.

Parties may make a counter offer / obtain further legal or other advice.

If it's a residential property sale a copy of the *New Zealand Residential Property Sale and Purchase Agreements Guide* is given to the vendor and a signed acknowledgement of receipt is obtained.



If the offer or conditions are not agreeable to either vendor or purchaser, the licensee can negotiate between them on price and/or conditions with the aim of reaching a mutual agreement.

The price and conditions in the transaction may be amended a number of times during the negotiation process. The vendor and purchaser must initial any amendments to show that they agree with the changes.



The vendor and purchaser have a binding contract once price and conditions have been agreed in writing by both parties. Both parties will have signed the agreement, acceptance is conveyed, and the agreement is dated. Under Section 132 of the Act, the licensee must give the parties a copy of the signed document as soon as practicable.

In accordance with best practice, the following should occur:

- the signed and dated original document is sent to the vendor's solicitor
- a copy is sent to the purchaser's solicitor
- a copy is given to the vendor as soon as practicable (required by Section 132 of the REA Act).
- a copy is given to the purchaser as soon as practicable (required by Section 132 of the REA Act)
- a copy for the agency (office)
- a copy for the licensee's files – so that it is possible to follow up and ensure the vendor and the purchaser are fulfilling their conditions and warranties in good faith and as required (for example, to reference with phone calls, written correspondence with the vendor or purchaser/third parties as appropriate and necessary).



The purchaser will be required to pay a deposit - usually 10% of the purchase price.

- The purchaser can negotiate when the deposit is paid i.e. when the conditional offer is accepted (most common practice) or when the agreement goes unconditional
- The deposit must be held for a minimum of 10 working days from the date it is received (section 123) in a trust account by the real estate agency. It must be held until the agreement is unconditional unless all parties sign for early release
  - Some agencies have made the business decision to use a third party trust service provider to handle all deposit monies, i.e. New Zealand Real Estate Trust, to assist in adhering to industry best practice standards
- The agent will usually take their commission from this deposit (as authorised) when the agreement becomes unconditional
- [2014] NZREADT 36 provides some useful comments about licensee duties in relation to collecting deposits:
  - The Disciplinary Tribunal made it clear that licensees have a duty to collect deposits and to report any problems in that regard not just to the client-vendor but also – importantly – to the client's solicitor (paras [100] and [101])
  - The Disciplinary Tribunal also confirmed that licensees have a duty to follow unpaid deposits, up until the point that it is made clear that the vendor's solicitor has taken over that task (para [100])
  - The Disciplinary Tribunal also said that while chasing deposits may be delegated to administrative staff within a real estate office, responsibility remains with the salesperson and agency. (para [102])



The process of working through any conditions towards settlement now begins (for example - builder's report, finance, overseas investment office consent, etc).

Once all conditions in the signed agreement are met the sale and purchase agreement becomes an unconditional contract, **OR**

The contract is cancelled if any conditions contained in the contract are not satisfied within the specified timeframe.



Pre-settlement inspection.

Pre-settlement inspection is subject to the property passing with vacant possession (refer clause 3.2 of the standard sale and purchase agreement).



The settlement date will be set out in the sale and purchase agreement.

This is the date when the purchaser pays the rest of the amount agreed for the property, usually through their lawyer. It is usually also the possession date (releasing of keys) when the purchaser takes possession of the property and can move in.

## Lease agreement - the process from offer to settlement

Lessee makes an offer to lease the space.



Licensee draws up the Agreement to Lease (Heads of Agreement) and asks lessee to sign it. Under Section 132 of the Act, the licensee must give the purchaser a copy of the signed document as soon as practicable.

The licensee needs to meet requirements of Rules 9.7, 12.1, 12.2, 12.3 and **prior to signing**, ensure accuracy with verifying the identity of all signatories, obtaining appropriate authorisation documentation if relevant [e.g. a power of attorney requires a Certificate of non-revocation; an enduring power of attorney requires a Certificate of non-revocation and non-suspension of the enduring power of attorney; a trustee requires a trust deed; a company director requires written authority to sign from Company Directors or company rules or a shareholder agreement; an executor of an estate requires a grant of probate].



The Agreement to Lease (Heads of Agreement) is taken to the lessor, and subject to any negotiations, arrangement is made for the lessor to sign it too.



If the offer or conditions are not agreeable to either lessor or lessee the licensee can negotiate between them on price and/or conditions with the aim of reaching a mutual agreement (for example - guarantees in support of lessor, fit out, etc).



The lessor and lessee have a binding contract once price and conditions have been agreed in writing by both parties. Both parties will have signed the agreement, the agreement is dated, and acceptance is conveyed.



The process of working through any conditions now begins (including due diligence).

Once all conditions in the signed agreement are met, the Agreement to Lease (Heads of Agreement) becomes an unconditional contract, **OR**

The contract is cancelled if any conditions contained in the contract are not satisfied e.g. subject to due diligence on the lessee, approval by solicitor).



The lessor's solicitor prepares the Deed of Lease (based on the contents of the Agreement to Lease) and forwards it to the lessee's solicitor to check, and then the solicitor arranges for the lessee to sign it.





Once signed by the lessee, documents are returned to the lessor's solicitor for signing by the lessor.



The lessee will be required to pay a deposit:

- The purchaser can negotiate when the deposit is paid i.e. when the conditional offer is accepted (most common practice) or when the agreement goes unconditional.
- The deposit should be held for 10 working days from the date it is received (section 123) in a trust account by the real estate agency, unless all parties sign for early release
  - Some agencies have made the business decision to use a third party trust service provider to handle all deposit monies, i.e. New Zealand Real Estate Trust, to assist in adhering to industry best practice standards
- The agent will usually take their commission from this deposit (as authorised) when the offer becomes unconditional
- [2014] NZREADT 36 provides some useful comments about licensee duties in relation to collecting deposits.
  - The Disciplinary Tribunal made it clear that licensees have a duty to collect deposits and to report any problems in that regard not just to the client vendor but also – importantly – to the client's solicitor (paras [100] and [101]).
  - The Disciplinary Tribunal also confirmed that licensees have a duty to follow up unpaid deposits, up until the point that it is made clear that the vendor's solicitor has taken over that task. (para [100])
  - The Disciplinary Tribunal also said that while chasing deposits may be delegated to administrative staff within a real estate office, responsibility remains with the salesperson and agency. (para [102])



At the completion of this process, as soon as practicable, each party will have a completed original copy of the Deed of Lease.



The signing of the Deed of Lease is completed following confirmation of any conditions recorded in the Agreement to Lease (Heads of Agreement), but before the commencement of the lease and payment of rent by the lessee.

**Note:** Registration of leases – In most cases, the parties have the option of protecting their interests by registering the lease on the Record of Title / Certificate of Title for the property. A lease of greater than three years' duration can be registered on the title.

## Multiple offers

A multiple offer (multi-offer) situation occurs when more than one purchaser or lessee makes an offer for the same property, space, or business by private treaty (including agreements to lease), at the same time.

A situation that started out as a single offer can quickly develop into a multiple offer.

Multiple offers can occur:

- following a tender or auction that was unsuccessful, or
- where prior offers can be considered in a tender or auction programme (though this practice is discouraged).

Where more than one party is interested in making an offer on a property, space, or business, the vendor or lessor will typically want to view all offers, and most are prepared to wait until all offers are ready to be presented.

Vendor or lessor timeframes must be reasonable and in writing.

Potential purchasers or lessees need to understand they need to make their 'highest and best offer'.

While the opportunity to negotiate further may occur (after all multiple offers have been submitted and if none are accepted), purchasers or lessees need to understand that it is more likely they will not get another opportunity to improve their offer.

All offers must be in writing, in a sealed envelope and should be presented to the vendor or lessor at the same time (refer to [2014] NZHC 2664 Maketu Estate Ltd v Robb & PGG Wrightson; page 13).

Only offers that contain an actual price can be presented. A prospective purchaser or lessee saying *"I'll offer \$1000 more than the best price anyone else offers"* is not a valid offer that can be presented.

Multiple offer situations can be confusing for potential purchasers or lessees and the REA continues to receive a number of complaints and enquiries from consumers about multiple offers.



### **Note – Complaints**

A lot of the complaints arise because potential purchasers or lessees have not understood the process correctly and feel they have been treated unfairly by the licensee.

It is important that you not only provide information about the multiple offer process but make sure the potential purchaser or lessee has understood this information.

There are also complaints made where there is confusion around timeframes in a multiple offer process. This is often the case where the potential purchaser or lessee has thought they were the only party interested in the property, space, or business.

Potential purchasers or lessees may be suspicious about competing 'last minute' interest. They need clear information from the licensee to help them understand the timeframes up to this point, and what they need to do next if they wish to secure the property, space, or business.

In accordance with best practice, REINZ suggests every real estate agency has a written policy to cover multiple offers that is transparent, is fair to all parties, ensures all interest is conveyed to the vendor or lessor and complies with REINZ rules of membership.

REINZ has provided a draft multiple offer acknowledgement form that can be used a template (refer to Appendix 2).

## Legal obligations in a multiple offer situation

The legal obligations in a multiple offer situation are governed by the obligations imposed by the Real Estate Agents Act 2008 and the Rules.

The following rules have particular relevance in a multiple offer situation.

Note: Rule 6 covers 'standards of professional conduct' of licensees. This includes the requirement to comply with the fiduciary duties with respect to clients, and licensees' obligations to act in good faith and deal fairly with all parties engaged in a transaction.

- Rule 6.2 – a licensee must act in good faith and deal fairly with all parties engaged in a transaction.
- Rule 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.
- Rule 9.2 – a licensee must not engage in any conduct that would put a client, prospective client, or customer under undue or unfair pressure.
- Rule 9.3 – requires licensees to communicate regularly, and in a timely manner with the client and to keep them well informed of all matters relevant to the client's interest (unless instructed otherwise).
- Rule 10.10 – requires licensees to submit to a client-vendor or lessor all offers concerning the sale, purchase or other disposal of any land or business provided that such offers are in writing.

## Privacy issues

Rule 9.17 which strictly prevents disclosure of any confidential personal information of a vendor or lessor to any other person, except with express written consent of the parties concerned, also has particular significance in a multiple offer situation.

**Rule 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.

### Important considerations in the multiple offer process

- The most important requirement is to ensure that all parties understand that they are participating in a multiple offer
- Potential purchasers or lessees need to be aware that from their perspective they should put in their 'best and highest offer'
- Potential purchasers or lessees must be made aware that they may only have one opportunity in terms of making their best offer
- Potential purchasers or lessees should also be made aware that the vendor or lessor may choose to negotiate to the exclusion of others or negotiate with all interested parties
- Potential purchasers or lessees will need to be assured that no other party will be made aware of the nature or extent of their offer
- In situations where a client-vendor or lessor instructs the licensee to try to obtain a better price than those offered on the closing date, a suggested solution is:
  - for the licensee to go back to each proposed purchaser or lessee on the basis that the vendor or lessor has instructed the licensee that none of the current offers have reached their expectations; and,
  - ask if they are prepared to increase their offer at this time.
- It is also important to ask the potential purchasers or lessees not to withdraw their offer until the vendor or lessor has had more time to consider the situation
- Potential purchasers or lessees are able to withdraw their offer or counter-offer at any time prior to acceptance if the notice of withdrawal is communicated prior to the notice of acceptance. All parties should be advised of their rights with regard to this.
- In these cases, a timeframe should be imposed by the licensee (any purchaser or lessee may require an answer within a stated timeframe). This is important to give certainty as to a final close-off time for acceptance or otherwise.
- All offers should be in a sealed envelope and should be presented by the listing licensee to the vendor or lessor at the same time. Where the listing licensee is associated with one, or more, of the offers then all offers should be presented by the supervising agent, the branch manager or a delegated independent nominee.
- In the event of a large number of multiple offers, one option may be for the process to become a public auction, but this would need consultation with all parties and auction conditions being prepared and presented at short notice.
- Occasionally licensees may disagree with in-house policies and procedures which are deemed to comply in every way and set a margin above the law. However, in all circumstances, licensees are required to adhere to those policies and procedures. Licensees are not at liberty to proceed with real estate agency work which is, in any way, in conflict.

## Administration Process

REINZ recommends that the following steps be used as a means of keeping a secure paper trail in respect of all multiple offer situations:

- Open a register of all parties wishing to participate in multiple offers
- Keep details (names, addresses, contact numbers and email addresses of all interested parties)
- Each offer should have a separate file with file notes of all communications, phone calls and hard copies of all email communications
- Keep signed copies of the multiple offer acknowledgement forms of each party in their respective file and provide a copy of the forms to the vendor or lessor
- Confidentiality is critical and absolutely no discussion as to the level of offers should be disclosed to other salespeople until all offers are finally dealt with
- If the vendor or lessor requires the salesperson to go back to the proposed purchaser or lessee, ensure the correct wording is used
- Time limits should be agreed upon with referral to the vendor or lessor and purchasers or lessees
- If the transaction is a residential property sale, at the time of getting all multiple offer acknowledgement forms signed, licensees must ensure that all parties are provided with the approved guide relating to the sale of residential property



### Note

The information above is from **REINZ Best Practice Guide: Multiple Offers V6, 13 January 2018** and is reproduced with the permission of REINZ.

## Backup offers

When a vendor or lessor accepts and signs a sale and purchase agreement or lease agreement, this first accepted offer becomes the primary contract.

From that point on, while the primary contract is still in place, any other offer made on that property, space, or business is referred to as a backup offer.

When drawing up a backup offer, licensees must offer all advice, meet all requirements and carefully check all terms as would be done when dealing with a primary contract. It must be clearly indicated in the offer that it is, in fact, a backup offer.

The party making the back-up offer will still be able to view other properties, spaces, or businesses, but if they decide to put an offer on another property, space, or business, they would first need to properly withdraw their back-up offer and ask the vendor or lessor to return their deposit. This would only be possible if the terms of the contract allow it.

If the primary contract is not confirmed or either the vendor's solicitor or the purchaser's solicitor has cancelled the contract, then the backup contract becomes operative. The party that made the backup offer must be informed that their contract has taken the place of the primary contract and from that point on their contract will proceed according to its terms.

Timeframes need to be carefully adhered to. If the first offer does not confirm by the time stated in the agreed contract, the first contract may be at an end and only once this is confirmed the backup offer would then proceed.



### Note

- Since contracts often fall over due to inspection and financing issues, it is a good idea to advise another party who is particularly interested in a property, space, or business to submit a backup offer
- A competent and ethical licensee should always ensure they have the full facts as to why a primary contract failed - full disclosure in accordance with the Code of Conduct will be required, for example, in relation to known defects
- It is the licensee's duty to ensure all processes are explained and understood by all parties involved
- All parties must be fully informed about what they are signing and the implications
- Timeframes confirmed must be ethical (i.e. fair and realistic), and licensees must avoid putting undue pressure on parties
- Licensees must remain impartial, i.e. they cannot 'prefer' the second offer - having a vested interest in the first offer falling over creates ethical issues
- The supervising agent or branch manager, not the individual licensee, should deal with back up offers
- A solicitor should manage the contractual process

## Holding deposit as stakeholders

Sections 122 and 123 of the Real Estate Agents Act 2008 govern the procedures that must be followed when receiving money in real estate transactions (refer to Appendix 3 if necessary).

### Third party trust accounts

Some agencies have made the business decision to use a third party trust service provider to handle all deposit monies, i.e. New Zealand Real Estate Trust. Use of an independent third party, who acts as custodian, helps to ensure compliance with industry best practice standards for the handling of monies received in respect of any transaction.



## Anti-money Laundering and Countering Financing of Terrorism Act 2009

Under the Financial Transactions Reporting Act 1996, real estate licensees are required to verify the identity of persons paying cash amounts of \$10,000 or more.

Notwithstanding this pre-existing reporting requirement, the real estate sector is required to comply with the Anti-money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act) from 1st January 2019. This is covered in the topic '*Anti-money laundering: your compliance requirements*'.

### Prescribed transactions

Real estate agents are designated 'reporting entities' under the AML/CFT Act and must meet all the legislative requirements of the AML/CFT Act in order to address the growing incidents of suspected illegal money laundering involving purchasing of properties using large sums of cash.

The New Zealand Financial Intelligence Unit (FIU) fulfils the functions and exercises powers of the Commissioner of Police as set out in the AML/CFT Act, providing financial intelligence relating to suspicious transaction/activity, money laundering, the financing of terrorism and other serious offences. Real estate licensees are required to complete prescribed transaction reporting (PTR) to the FIU, as set out in the AML/CFT Act (section 48A).

A prescribed transaction means a transaction conducted through a reporting entity in respect of:

- An international wire transfer of NZD1,000 and over (also known as International Funds Transfers or IFTs) where at least one of the institutions (i.e. ordering, intermediary or beneficiary institution) involved in the transaction is in New Zealand, and at least one is outside New Zealand
- A domestic physical cash transaction of NZD10,000 and over (also known as Large Cash Transactions or LCTs) which are transactions in New Zealand involving the use of physical currency (i.e. coin and printed money designated as legal tender, and circulates as, and is customarily used and accepted as a medium of exchange in the country of issue)

<http://www.police.govt.nz/advice/businesses-and-organisations/financial-intelligence-unit-fiu/prescribed-transactions>

## Suspicious transactions

Extract from 'Best Practice Guidelines for Financial Institutions' – NZ Police Financial Intelligence Unit.

The following scenarios may give reasonable grounds for suspicion [in real estate transactions]:

- Initial deposit is paid by the purchaser with a large amount of cash
- Initial deposit is paid with a cheque from a third party, for example, an associate or relative (other than a spouse)
- A purchaser uses a significant amount of cash to close a real estate deal
- Property is purchased in the name of a nominee, for example, an associate or relative (other than a spouse)
- Purchaser refuses to put their name on any document associated with the property or uses a different name on contracts, agreements or deposit receipts, etc
- Client unsatisfactorily explains the last-minute substitution of the purchasing party's name
- Client purchases property without inspecting the location

For more information see '*Best Practice Guidelines for Financial Institutions*' available on the New Zealand Police website:

<http://www.police.govt.nz/advice/businesses-and-organisations/fiu/about>

## Unit Titles Act 2010 requirements

In previous Continuing Education content, we have looked at the need for a professionally competent and ethical licensee to discuss the specific disclosure requirements laid down by the Unit Titles Act 2010 with a client-vendor of a unit title property at the time of entering into an agency agreement.

We have also highlighted that the ADLS / REINZ Agreement for Sale and Purchase 9th edition 2012(7) incorporates compulsory provisions of the Unit Titles Act 2010 that relate to unit titles in clauses 2.4(3), 3.17, 6.3 and 9.1 - 9.6.

We will now look in more detail at requirements relating to unit title properties.



### Note

The information that follows is adapted from the 'Unit Titles Act 2010 Information Sheet' which is available on the REINZ website [www.reinz.co.nz](http://www.reinz.co.nz); under Advisory Resources tab.

The information sheet was jointly prepared by the Real Estate Institute of New Zealand (REINZ), the Real Estate Agents Authority (the Authority) and the Home Owners & Buyers Association of New Zealand Inc. (HOBANZ). All licensees should read the information sheet in full.

### Identifying a unit title property

You can tell if a property is a unit title development as the Certificate of Title (now Record of Title) will state either 'stratum in freehold' or 'stratum in leasehold'. If there is any doubt, check with a lawyer or licensed conveyancing practitioner.

### Pre-contract disclosure

Vendors must provide a pre-contract disclosure statement to purchasers before a sale and purchase agreement is entered into (refer section 146(1) Unit Titles Act 2010). Licensees should ensure that the pre-contract disclosure statement is available prior to commencing any marketing or advertising.

This statement must be in the prescribed form (Form 18 of the Unit Titles Regulations 2011) and involves making some very specific declarations. Tenancy Services / Ministry of Business, Innovation and Employment has created a more user-friendly form which is downloadable from its website.

[www.tenancy.govt.nz/uta/](http://www.tenancy.govt.nz/uta/)

### Pre-settlement disclosure

Vendors must provide a pre-settlement disclosure statement to purchasers once a sale and purchase agreement has been entered into and before it has settled (section 147(1) Unit Titles Act 2010).

It must be provided by the end of the 5th working day before the settlement date (section 147(2) Unit Titles Act 2010). If it is not provided by this time the purchaser can either delay settlement until the 5th working day after it is provided or cancel the sale and purchase agreement by giving 10 days' notice in writing.



#### Note

There is no prescribed form to use. However, it is recommended the form available from the Tenancy Services / Ministry of Business, Innovation and Employment website is used.

[www.tenancy.govt.nz/uta/](http://www.tenancy.govt.nz/uta/)

Vendors should prepare this statement with assistance from their lawyer or licensed conveyancing practitioner. Vendors are normally expected to meet the related costs.

The pre-settlement disclosure statement must be accompanied by a certificate given by the Body Corporate certifying that the information in the statement is correct.

### Additional disclosure

Vendors must provide additional disclosure statements if requested by the purchaser. Such statements are at the purchaser's cost. This must be requested by the purchaser before the earlier of (section 148 Unit Titles Act 2010):

- The end of the 5th working day after the date of the sale and purchase agreement; or
- The end of the 10th working day before the settlement date

The vendor must provide the additional disclosure statement by the end of the 5th working day after the request was made (section 148(3) Unit Titles Act 2010).

If it is not provided in this time the purchaser can either delay settlement until the 5th working day after the date it is provided or cancel the sale and purchase agreement by giving 10 days' notice.



#### Note

There is no prescribed form to use. However, it is recommended the form available from the Tenancy Services / Ministry of Business, Innovation and Employment website is used.

[www.tenancy.govt.nz/uta/](http://www.tenancy.govt.nz/uta/)

Vendors should prepare this statement with assistance from their lawyer or licensed conveyancing practitioner. The vendor's reasonable costs incurred in preparing this disclosure statement must be met by the purchaser (section 148(5) Unit Titles Act 2010).

### Turn-over disclosure

Turn-over disclosure does not relate to the buying and selling of a unit title property. A turn-over disclosure statement must be provided by the original owner or developer to the Body Corporate. The parties should seek detailed legal advice from their lawyers in relation to this. Sections 154-157 of the Unit Titles Act 2010)

### What you need to do as a licensee

Talk to your vendor client about the need to provide a pre-contract disclosure statement as early as possible and before the marketing of the property starts.

Part of a licensee's duty of due diligence before marketing a property, where that property is a unit title, includes understanding the key aspects of the body corporate rules and other documentation that will be provided as part of the required disclosure. This ensures that the marketing of the property, and any representation made to a customer about the property, is accurate. Licensees are not expected to be lawyers, so the input of the vendor client's lawyer may be necessary at this stage. Vendor clients must understand that the absence of such due diligence may restrict the way in which the property is able to be marketed and any representations that may be made about it.

Show your client the recommended pre-contract disclosure statement (Form 18 of the Unit Titles Regulations 2011) and discuss with them how the information can be collected to meet its requirements. Explain to your client that they as the owner must sign the pre-contract disclosure statement and that they should get advice if they are unclear on what this means. It is important to re-state that this is a vendor disclosure statement requirement. Licensees should not participate in the preparation of these documents.

Encourage your client to consider providing genuinely interested prospective purchasers with as much relevant information about the Body Corporate as they have or can get from other owners of the Body Corporate. This will help prospective purchasers to make a more informed decision about their purchase which will reduce the risk of the deal falling over at a later stage.

Explain to your client that until a completed and signed pre-contract disclosure statement is provided, you may need to postpone any active marketing of the property.

Once obtained, provide the complete, signed and dated pre-contract disclosure statement to all potential purchasers as soon as you can, for example, at open homes. At the very latest it must be provided to the purchaser before the purchaser enters into a sale and purchase agreement. Receipt of the pre-contract disclosure statement should be acknowledged.



#### Note

Further information can be obtained from:

Tenancy Services / Ministry of Business, Innovation and Employment

[www.tenancy.govt.nz/uta/](http://www.tenancy.govt.nz/uta/)

HOBANZ [www.hobanz.org.nz/guidance-support](http://www.hobanz.org.nz/guidance-support)

## Loan-to-value ratios

A loan-to-value ratio (LVR) is a measure of how much a bank lends against a property compared to its value.

It is calculated by dividing the loan amount by the value of the home.

For example:

Property value of \$800,000 with a deposit of \$120,000 = LVR 85%

Calculation:

$$\frac{800,000 - 120,000 = 680,000}{800,000} \times 100\% = \frac{[\text{loan amount}]}{[\text{property value}]} \times 100\%$$

Since 2013 the Reserve Bank has restricted LVRs on residential property for certain categories of borrowers and for prescribed regions. These restrictions have been revised over time.

The current LVR restrictions on new mortgage loans (as at 1 January 2019) are:

### Owner-occupier loans

This is borrowing secured with a mortgage against residential properties that the borrower lives in (or uses as a holiday house).

- Up to 20 percent (increased from 15 percent) of new mortgage loans to owner-occupiers can have deposits of less than 20 percent.

### Investor loans

LVR lending restrictions are tighter for loans secured by investment property, in response to the growing housing market risks in that area.

- Up to 5 percent of new mortgage loans to property investors can have deposits of less than 30 percent (lowered from 35 percent).

Reference: <https://www.rbnz.govt.nz/>

Licensees should recommend that prospective purchasers consult with their lender as early as possible about any LVR restrictions that might apply to their borrowing.

## Property taxation provisions

The information provided in this section is in accordance with the Land Transfer Act 2017, and the Taxation (Bright-line Test for Residential Land) Act 2015.

**Note:** *There may be further changes to these new tax provisions.*

### Amendments

Amendments to the Land Transfer Act 1952 (now the Land Transfer Act 2017) introduced sections 78 and 79 (refer to Appendix 4):

- 78 Transferors and transferees must provide tax statement stating that transfer non-notifiable or providing tax information, and
- 79 Content of tax statement

These amendments applied to agreements to purchase ALL land or interests in land entered into from 1 October 2015.

The purpose of the provisions is to enforce the income tax obligations of those who buy and sell New Zealand real estate (including any potential income tax liabilities in relation to rental income).

Every person who enters into a sale and purchase agreement for any land in New Zealand is required to provide a New Zealand IRD number and complete a Tax Statement for their lawyer. This information is required prior to settlement and possession.

'Offshore persons' who enter into a sale and purchase agreement for any land in New Zealand are also required to provide a New Zealand IRD number; applicants are required to open a New Zealand bank account before applying for a New Zealand IRD number.

Where an entity is involved, (for example - trust, charitable trust, company, partnership) an IRD number is required for the entity alone; not the individuals (e.g. trustees, company directors, partners).

### Bright-line test - extended

The Taxation (Bright-line Test for Residential Land) Act 2015 applies to agreements to purchase residential land entered into from 1 October 2015.

The Taxation (Bright-line Test for Residential Land) Act 2015 originally required income tax to be paid on gains from the sale of residential land bought and sold within 2 years unless exemptions applied.

On 29 March 2018, the Bright-line test was extended from 2 years to 5 years for all residential property acquired after that date. (Section CB 6A Income Tax Act 2007)

The 5-year period runs from the date of registration to the agreed date for sale.

Exemptions include:

- If the property was the main home of a New Zealand resident
- If the property was inherited
- If the property was transferred under a relationship property agreement.

## **Completion of the land transfer tax statement**

A completed land transfer tax statement is required for all contracts entered into when transferring freehold, leasehold, life estates, stratum estates, licences to occupy and other specified estates in land as defined in the Land Transfer Act 2017. A tax statement isn't needed if the transfer relates to Māori land as defined by Te Ture Whenua Māori Act; and/or is part of a Treaty of Waitangi settlement process.

For more information, see the Land Information New Zealand website:

<https://www.linz.govt.nz/land/land-registration/prepare-and-submit-your-dealing/property-tax-compliance-requirements>

A copy of the Land Transfer Tax Statement form is reproduced in Appendix 5 of this document. This is available from LINZ.

## **Bright-line and taxation information clauses in agreement documents**

The REINZ and ADLS standard sale and purchase agreements, auction agreements, and tender agreements have now had the General Terms of Sale updated to incorporate the requirement for bright line and taxation information.

## **Implications for licensees**

- Licensees must advise that the non-provision of tax information may delay settlement.
- Licensees must advise that possible exemptions and other issues related to property taxation provisions must be discussed with a lawyer or conveyancer.
- Licensees must ensure vendors and purchasers are aware that they need to liaise with their lawyers or conveyancers well before the settlement date and allow them a reasonable time to obtain advice before signing a sale and purchase agreement.
- Licensees should also be aware that vendors and purchasers need to speak to their lawyer or conveyancer about the following:
  - A tax statement must be provided for ALL agreements for sale and purchase before the property transfer can be registered
  - An IRD number will need to be provided for the tax statement. There will be an exemption for a New Zealand resident's main home, but this exemption will NOT apply for offshore persons or trusts.
  - IRD numbers can ONLY be given to holders of a New Zealand bank account
  - Overseas tax residents will also need to supply their foreign tax identification number (TIN) and their country code from their home jurisdiction
  - Advice from a lawyer or conveyancer must be sought to help with exemptions or to deal with situations where person(s) have more than one home





### Note

It is the lawyer's or conveyancer's responsibility to facilitate the collection of all required information through the Landonline system.

Further information can be obtained from:

**Inland Revenue:** [www.ird.govt.nz](http://www.ird.govt.nz)

**Land Information New Zealand:** [www.linz.govt.nz](http://www.linz.govt.nz)

**REINZ:** [www.reinz.co.nz](http://www.reinz.co.nz)

## Changes to the Overseas Investment Act 2005

The Overseas Investment Act 2005 (OIA) was amended through a bill introduced and passed by the government in August 2018 which aims to ensure that investments made by overseas persons in New Zealand will have genuine benefits for the country.

Consent must be obtained from the Minister of Finance and Land Information New Zealand (LINZ) prior to overseas investment in **sensitive land**. Consent may be sought by applying, in writing, to the Overseas Investment Office (OIO), which is part of LINZ.

### Overseas buyers of sensitive assets

Overseas buyers are classed as such if they are neither a New Zealand citizen nor ordinarily resident in New Zealand.

A non-New Zealand based company, partnership, joint venture or trust can also be classed as an overseas person.

Overseas persons, and associates of overseas persons need to apply to the Overseas Investment Office (OIO) for consent if they wish to acquire:

- *Sensitive land* or an interest in sensitive land (for example, by buying shares in a company that owns sensitive land), or
- Business assets worth more than \$100 million, or
- fishing quota or an interest in fishing quota.



### Note

*Sensitive land* is defined in schedule 1 of the Overseas Investment Act 2005 (reproduced in Appendix 6).

*Sensitive Land* now includes residential land. (The restrictions do not apply to house sales prior to 22 October 2018).

More generally, the amendment is intended to ensure that persons not ordinarily resident in New Zealand are not able to purchase existing houses or other pieces of residential land.

The inclusion of residential land to the list of sensitive land has broad implications for the real estate sector. As noted above, the definition of residential land refers to properties that are classified as *residential* or *lifestyle* for rating valuation purposes, which not only includes apartments, rental flats, and unit title carparks in residential buildings but also what may be considered to be commercial land. For example, bare development land for apartments or residential subdivisions, or retirement villages.

## How to check if land being marketed is 'residential' or 'lifestyle'

LINZ has recommended that a check should be made on the 'Building Type' on websites such as [www.qv.co.nz](http://www.qv.co.nz)



### Key point

The inclusion of residential land to the list of sensitive land has broad implications for the real estate sector.

The Agreement for Sale and Purchase of Real Estate, Ninth Edition 2012 (8) includes an amendment to clause 10.6 to allow for OIO to process the sale of residential land within 20 working days, as follows:

'If the Land Act/OIA date is not shown on the front page of this agreement, that date shall be the settlement date or a date **95** working days from the date of this agreement whichever is the sooner, **except where the property comprises residential (but not otherwise sensitive) land in which case the date shall be the settlement date of a date 20 working days from the date of this agreement whichever is the sooner**'.

The Particulars and Conditions of Sale by Auction and Tender also include amendments to include the situation where the purchaser has already obtained OIO consent (refer clause 19.1 and 20.1 respectively).

In addition to the core aim, the amendment made more general changes to the OIA, including:

- Enhancing the information-gathering and enforcement powers of the Overseas Investment Office (OIO), and
- Amending the definition of *ordinarily resident in New Zealand*

A person will **not be considered as being an overseas person** under the Act if they are either a New Zealand citizen or ordinarily resident in New Zealand, and therefore will not usually need to get OIO consent to buy land in New Zealand.



### Note

There are exceptions for Australian and Singaporean citizens and permanent residents. They will be treated in the same way as New Zealand citizens and permanent residents respectively.

## Ordinarily resident in New Zealand

According to LINZ, the following people and organisations are deemed to be ordinarily resident in New Zealand and, therefore, **do not** usually need to get consent to buy land in New Zealand. They are:

- People who hold a New Zealand resident-class visa and:
  - are living in New Zealand, and
  - intend to live in New Zealand indefinitely, and
  - have done so for the past 12 months
  - are a tax resident
  - have been in NZ for 183 days or more in total in the preceding 12 months
- Companies, trusts and partnerships that have less than 25% ownership or control by overseas persons

To qualify as ordinarily resident in New Zealand, the person must hold a residence class visa, and either be domiciled in New Zealand or have been residing in New Zealand for at least 183 days in the past 12-month period with the intention of residing indefinitely.

Refer to **Appendix 7 - OIA: Can you buy a home in New Zealand to live in?** for a summary and overview of rights to buy.

## Overseas person

By contrast, the meaning of an **overseas person** is:

- not a New Zealand citizen and is not ordinarily resident in New Zealand; including:
  - an individual who holds a temporary visa (e.g. visitor, student, working holiday, work)
- a company incorporated outside of New Zealand;
- a company or other entity, e.g. trust that is at least 25% owned or controlled by an overseas person or persons.

For further information on the changes refer to the New Zealand Treasury link as follows:

<https://treasury.govt.nz/sites/default/files/2018-08/screening-res-land-qanda.pdf>

Potential purchasers who fall into the overseas person/associate category must be directed to a lawyer. Ensure that the vendor or vendor's solicitor is made aware of any potential purchasers who fall into the overseas person/associate category.

## What the changes mean for licensees

- Licensees need to be aware of how these changes may affect the purchase of residential land. This is especially important when dealing with any person who may be considered an *overseas person*.
- Licensees should also be aware that there is likely to be an increase in OIO applications as a result of the changes. This may also mean time delays for prospective overseas purchasers.
- LINZ provides detailed information on the following link:
- <https://www.linz.govt.nz/overseas-investment/about-overseas-investment-office/legislation-ministers-delegated-powers/overseas-investment-amendment-act-2018>

### Eligibility statement by purchasers

Every purchaser is required to complete a 'Residential Land Statement' for purchases from 22 October 2018 (any transaction that has occurred prior to 22 October is exempt, even if the settlement takes place after this date). Refer to Appendix 5.

This statement must be provided to the conveyancer of the transaction and held for a minimum of 7 years.

It is important that purchasers who require OIO consent make application early on through the transaction. The OIO may even provide pre-approval.

### Purchase of residential land by an overseas person who will not live in it

Overseas people may be able to buy residential land but not live in it.

Categories for this type of purchase include:

- A property investor or developer who wants to use residential land to:
  - develop land and on-sell new housing
  - build and/or operate long term accommodation facilities
- A purchaser wishing to use residential land for non-residential purposes e.g. motels, hotels, offices
- A business needs to use the land for a residential purpose and not as a core business activity e.g. staff accommodation facilities

## Large developments

Developers building apartment developments of 20 units or more that are in a multi-storey complex can apply for an **Exemption Certificate** from October 2018. This allows the developer to sell up to 60% of the development to overseas persons 'off the plan' without OIO consent.

Purchasers under this exemption will be able to retain the apartment as an investment but will not be able to live in it.

By contrast, the OIO has made provision for applications for a 'Transitional Exemption Certificate for Large Residential Development' which applies to 'apartment developments of 20 units or more in a multi-storey building' that **was already underway prior** to the new regime taking effect in August 2018.

Applications must be made no later than 21 February 2019 and the Certificate expires five years after Royal assent. It is only applicable to the initial sale of the unit by the developer.

This allows developers to sell up to 100% of new units to overseas persons off-the-plans without OIO consent.

Purchasers of these new units are permitted to live in them if they wish.

However, any future sale of the units will be captured under the OIA and full consent requirements must be complied with.

## Forestry assets

Overseas investment in forestry for freehold or leasehold land which is either in the forest or is to be converted to forest currently requires consent.

Changes made through the amendment:

'extend this requirement to investments in more than 1,000 hectares of forestry rights in any year. Forestry rights are different to other investments as they do not involve the sale of the land, but the right to grow and harvest the crop. You will only be able to purchase up to 1,000 hectares of forestry rights per annum, or any forestry right of less than three years duration, without approval.

The changes introduce two new consent pathways for forestry investments (including freehold land and forestry rights). One of these is a modified version of the existing benefit test. They also extend the overseas investment regime to cover non-forestry *profit a prendre* (rights to take), which are currently exempt.'

Source: <https://www.linz.govt.nz/overseas-investment/about-overseas-investment-office/legislation-ministers-delegated-powers/overseas-investment-amendment-act-2018>

## Penalties for non-compliance

People who do not comply with the consent requirements of the OIA could face large fines or imprisonment and could be required to sell any property they have purchased illegally.

## Other sources

Refer to LINZ website for detailed information brochures:

<https://www.linz.govt.nz/overseas-investment/find-out-if-you-need-consent-invest-new-zealand/buying-land-new-zealand-key-information-for-overseas-investors>

As we saw in the previous section, in accordance with the Taxation (Bright-line Test for Residential Land) Act 2015 and the Land Transfer Act 2017:

- An IRD number will need to be provided for the tax statement (there is no exemption for the main home as would apply for a New Zealand resident)
- Overseas buyers and sellers need to have a New Zealand bank account to get a New Zealand IRD number. This rule also applies to New Zealanders who have been out of the country for 3 or more years
- Overseas tax residents will also need to supply their foreign tax identification number (TIN) and their country code from their home jurisdiction

(Refer to Appendix 8 – Residential Land Statement Form 2)

## Appendices

### 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, 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 Real Estate Agents Authority code of professional conduct and client care. The Rules were made by the Authority and notified in the New Zealand Gazette.<sup>1</sup> 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.

#### 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.

#### 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 Real Estate Agents Authority (**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 conduct<sup>1</sup> may make a report to the Authority.

7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct<sup>2</sup> 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.

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

### **Supervision and management of salespersons**

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<sup>1</sup> Unsatisfactory conduct is defined in the Act: see section 72

<sup>2</sup> Misconduct is defined in the Act: see section 73

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.<sup>3</sup>

#### 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).

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.

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<sup>3</sup> 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)

9.9 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 defects<sup>4</sup>, a licensee must either—

(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

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<sup>4</sup> 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.<sup>4</sup>

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 <sup>5</sup>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

## Appendix 2 – REINZ multiple offer presentation - proposed purchaser acknowledgement

To: (XYZ Realty) (Salesperson – Name)

I/We acknowledge that you have provided to me/us the following advice, consistent with the vendor's instructions:

- a) That there is more than one prospective purchaser interested in purchasing the property described below and/or one or more offers have or may be received in respect of the property.
- b) That you have advised me/us to put my/our highest and best offer in writing for presentation by you to the vendor. That the vendor has the right to accept or reject any offer.
- c) That the vendor has the right to counter offer and/or negotiate with one prospective purchaser to the exclusion of other purchasers.
- d) That I/we might not have any further opportunity to submit a higher or better offer to the vendor.
- e) That the terms and conditions of my/our offer will remain confidential to me/us and the salesperson drafting the offer, and management. The offer will be placed in a sealed envelope and will only be opened in the presence of the vendor unless otherwise instructed by the vendor.
- f) That my/our offer and any other offers will be presented at the same time to the vendor by the licensee, branch manager or independent nominee or otherwise in accordance with the protocols of XYZ Realty.

Address of property: .....  
 .....  
 .....

I/We have been recommended to obtain independent legal advice before signing this document.

*NB: it is not compulsory to participate in the multiple offer process and therefore signing this form is not mandatory. Offers presented outside this multi-offer process will be handled according to the vendor's instructions.*

Purchaser(s) signature(s): .....

Purchaser(s) signature(s): .....

Date: ...../...../.....

### Note:

The information above is reproduced with permission from REINZ Best Practice Guide: Multiple Offers V6, January 2018

## **Appendix 3 – Section 122 and 123 of the Act**

### **122 Duty of agent with respect to money received in course of business**

- (1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money or in accordance with that person's directions.
- (2) Despite subsection (1), if an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to the money, he or she must take all reasonable steps to ascertain as soon as practicable the person who is entitled and may retain the money in his or her trust account until that person has been ascertained.
- (3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in New Zealand under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct.
- (4) No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors.
- (5) Nothing in this section takes away or affects any just lien or claim that an agent who holds money to which this section applies has against the money.

### **123 Money to be held by agent for 10 working days**

- (1) When an agent receives any money in respect of any transaction in his or her capacity as an agent, he or she must not pay that money to any person for a period of 10 working days after the date on which he or she received it.
- (2) Despite subsection (1), a court order or an authority signed by all the parties to the transaction may require the agent to pay the money before the expiry of the period specified in that subsection.
- (3) If at any time while holding any money on behalf of any party to the transaction, the agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the agent must not at any time pay that money to any person except in accordance with a court order or an authority signed by all the parties to the transaction.



## Appendix 4 – Land Transfer Act 2017 ss78 and 79

### **78 Transferors and transferees must provide tax statement stating that transfer non-notifiable or providing tax information**

- (1) An instrument to transfer a specified estate in land is not in order for registration unless—
- (a) each of the transferors and transferees completes a tax statement; and
  - (b) the tax information in that statement is given to the chief executive in accordance with subsection (2) or (3).
- (2) If the instrument is an electronic instrument,—
- (a) the transferor or transferee must give the tax statement to the certifier; and
  - (b) the certifier must give the tax information in that statement to the chief executive when lodging the instrument for registration.
- (3) If the instrument is a paper instrument, the tax statement must be attached to the instrument when the instrument is lodged for registration in accordance with [section 34](#).
- (4) This section does not apply to an exempt transfer.

Compare: 1952 No 52 [s 156B](#)

### **79 Content of tax statement**

- (1) A tax statement completed by or on behalf of a transferor or transferee must—
- (a) be signed by the transferor or transferee; and
  - (b) be dated on the date on which it was signed; and
  - (c) state the transferor or transferee's full name; and
  - (d) state whether the transfer is of land that has a home on it; and
  - (e) state whether the transferor or, as the case may be, the transferee, or a member of that person's immediate family, is a New Zealand citizen or a holder of a resident visa, work visa, or student visa; and
  - (f) in the case of a transferee, if the transferee or a member of the transferee's immediate family is a holder of a work visa or student visa, state whether the transferee or a member of the transferee's immediate family intends living on the land; and
  - (g) either—
    - (i) state that the transfer instrument is for a non-notifiable transfer (or, as the case may be, is, in respect of the transferor or transferee making the statement, a non-notifiable transfer) and specify the category of that non-notifiable transfer; or
    - (ii) provide all of the information set out in subsection (2).
- (2) The information must include all of the following:
- (a) the transferor's or transferee's IRD number; and
  - (b) whether the transferor or transferee (without taking into account any double tax agreement that would otherwise apply) is, or is not, treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement; and
  - (c) if the transferor or transferee is (without taking into account any double tax agreement that would otherwise apply) treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement,—
    - (i) the name of that jurisdiction; and

- (ii) the country code for that jurisdiction as prescribed by the Commissioner of Inland Revenue; and
- (iii) the equivalent of the transferor's or transferee's IRD number in that jurisdiction.

(3) However, if a transferor or transferee is—

- (a) acting in the capacity of the trustee of a trust, the information must relate to the trustee in that capacity; or
- (b) acting as a nominee or under a power of attorney, the information must relate to the person who made the nomination or granted the power of attorney; or
- (c) acting in the capacity of a partner in a partnership, the information must relate to the partnership; or
- (d) a person acting on behalf of an unincorporated body, the information must relate to the unincorporated body.

(4) To avoid doubt, a transferor or transferee who does not have an IRD number must request one for the purpose of providing the information required by subsection (2)(a).

(5) In this section, **IRD number** has the meaning given to tax file number by [section 3\(1\)](#) of the Tax Administration Act 1994.

(6) For the purpose of subsection (1)(d), **home** means a dwelling mainly used as a residence.

Compare: 1952 No 52 [s 156C](#)

## Appendix 5 – Land Transfer Tax statement

### Land Transfer Tax Statement

Sections 78 & 79 of the Land Transfer Act 2017

- You can use this form to provide the required tax details as part of registering your property transfer
- A separate tax statement will need to be completed for each individual or entity (non-individual/corporate)
- See notes (attached) for details on how to complete this form.

#### Property Details

1. Record of title reference
_____
2. Instrument number of transfer to be registered (if available)
_____
3. Does the transfer include any land that has a home on it?
<i>For this question a home is any dwelling that is mainly used as a place of residence e.g. house, apartment, unit whether tenanted, occupied or not</i>
<input type="radio"/> yes <input type="radio"/> no

#### Seller / Buyer Identity

4. Is this statement for?
<input type="radio"/> a transferor (seller) <input type="radio"/> a transferee (buyer)
5. Enter the exact name that EITHER currently appears on the title (if transferor/seller) OR will appear on the title (if transferee/buyer)
<b>For mortgagee, rating, and court ordered sales, refer to section 5 in the notes before completing the name</b>
_____
6. In this transaction are you representing?
<b>See section 6 in the notes for more information</b> <input type="radio"/> the person (individual) named in 5 above → go to 9 <i>For example:</i> <ul style="list-style-type: none"> <li>○ yourself</li> <li>○ yourself as a trustee</li> <li>○ yourself as a partner in a partnership</li> <li>○ yourself as an executor or administrator of a deceased estate</li> <li>○ another person as their attorney</li> </ul> <input type="radio"/> the entity (non-individual/corporate) named in 5 above → go to 14 <i>For example:</i> <ul style="list-style-type: none"> <li>○ a company</li> <li>○ a company as a trustee</li> <li>○ a corporate entity (body corporate, incorporated society, etc.)</li> <li>○ a public or local government authority</li> <li>○ an entity as its attorney</li> <li>○ other non-individual</li> </ul> <input type="radio"/> a nominator <b>not</b> named in 5 above → go to 7 <ul style="list-style-type: none"> <li>○ this only applies where you will be holding the property on behalf of another person or entity</li> <li>○ this does not apply where, for example, a person nominates their family trust to complete the purchase of a property</li> </ul>

7. If you are acting as a nominee for a nominator, please enter the name of your nominator

*For definition of nominee please refer Section YB21 of the Income Tax Act 2007*

☐ if you are acting for multiple nominators, please mark here

*If you are acting for multiple nominators, enter one name above and answer all subsequent questions on behalf of that nominator. A tax statement will need to be completed for each of the remaining nominators. Refer to the notes for more information on multiple nominators*

8. Is your named nominator a person (individual)?

- ☐ yes → go to 9  
☐ no → go to 14

9. Mark only one option to answer this question. Are you?

- ☐ a New Zealand citizen  
☐ a holder of a New Zealand resident visa  
☐ a holder of a New Zealand student visa  
☐ a holder of a New Zealand work visa (e.g. working holiday, essential skills, study to work, work to resident, etc.)  
☐ none of the above

*If you are acting as a nominee or as an attorney for an individual, please answer this question and all following questions on behalf of the person you are acting for. For example, if the nominator or donor is a New Zealand citizen, mark New Zealand citizen*

10. Mark all the options you need to answer this question. Is any member of your immediate family?

- ☐ a New Zealand citizen  
☐ a holder of a New Zealand resident visa  
☐ a holder of a New Zealand student visa  
☐ a holder of a New Zealand work visa (e.g. working holiday, essential skills, study to work, work to resident, etc.)

or ☐ no member of my immediate family is any of the above

11. If you are a transferor/seller → go to 14

12. If you are a transferee/buyer and no one in your immediate family including yourself holds a New Zealand work or student visa → go to 14

13. Do you or a member of your immediate family intend living on the land?

- ☐ yes  
☐ no

## Tax details

14. If you are acting for an entity, trust, estate, partnership, nominator, or under a power of attorney, please complete all tax details on behalf of the person or entity for whom you are acting.

15. If you wish to claim an exemption from providing tax details enter the non-notifiable reason code:

*For example, if the property is or will be your main home, insert "A" below.  
You cannot claim the main home or any other non-notifiable reason if you are an offshore person.*

**Refer to section 15 in the notes for more non-notifiable reason codes**

16. If you have entered a non-notifiable reason code → go to 20

17. Enter the relevant New Zealand IRD number for yourself or the person or entity you are representing

*i.e. the tax number for the person, trust, company, partnership, body corporate, or unincorporated body*

18. Apart from New Zealand, are you or the person or entity you are representing a tax resident in any other country?

**Refer to section 18 in the notes to find out more details about tax residency**

☐ yes

☐ no → go to 20

19. Complete the following details for each country/jurisdiction, other than New Zealand, you or the person or entity you are representing are a tax resident in.

Name of country/jurisdiction	Country code	Taxpayer identification number

## Signature

20. I certify that the information in this statement is true and correct at the time of signing this. I am aware there are penalties for providing incorrect information.

Signature

Date

Your name

Position or office held (if signing as an authorised person)

## Appendix 6 – Overseas Investment Act Schedule 1

### Part 1 What land is sensitive

#### What land is sensitive

Land is **sensitive** under this Act if—

- (a) the land is or includes land of a type listed in table 1 and the area of that type of land exceeds the corresponding area threshold (either alone or together with any associated land of that type), if any; or
- (b) the land (**land A**) adjoins land of a type listed in table 2 and the area of land A exceeds the corresponding area threshold (either alone or together with any associated land), if any.

**Table 1**

<b>Land is sensitive if it is or includes this type of land</b>	<b>... and that type exceeds this area threshold (if any)</b>
residential land	—
non-urban land	5 hectares
land on islands specified in <a href="#">Part 2</a> of this schedule	0.4 hectares
land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)	—
foreshore or seabed	—
bed of a lake	0.4 hectares
land held for conservation purposes under the <a href="#">Conservation Act 1987</a>	0.4 hectares
land that a district plan or proposed district plan under the <a href="#">Resource Management Act 1991</a> provides is to be used as a reserve, as a public park, for recreation purposes, or as open space	0.4 hectares
land subject to a heritage order, or a requirement for a heritage order, under the <a href="#">Resource Management Act 1991</a> or by Heritage New Zealand Pouhere Taonga under the <a href="#">Heritage New Zealand Pouhere Taonga Act 2014</a>	0.4 hectares
a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero or for which there is an application that is notified under <a href="#">section 67(4)</a> or <a href="#">68(4)</a> of the Heritage New Zealand Pouhere Taonga Act 2014	0.4 hectares
land that is set apart as Māori reservation and that is wahi tapu under <a href="#">section 338</a> of Te Ture Whenua Maori Act 1993	0.4 hectares

## Appendix 7 – OIA: Can you buy a home in New Zealand to live in?

**OVERSEAS INVESTMENT OFFICE**  **Land Information New Zealand**  
Toitū te whenua

# Can you buy a home in New Zealand to live in?

**Most overseas people are not able to buy homes in New Zealand to live in, but some can apply to the Overseas Investment Office for consent.**

<p><b>You don't need consent if...</b></p>	<div style="text-align: center; font-size: 2em; margin-bottom: 10px;">✓</div> <ul style="list-style-type: none"> <li>• You are a New Zealand, Australian or Singaporean citizen.</li> <li>• You have a New Zealand, Australian or Singaporean Permanent Resident visa and live in New Zealand.*</li> <li>• You have a New Zealand Resident visa and live in New Zealand.*</li> </ul> <p><small>*You have lived in New Zealand for at least 183 days in the past 12 months.</small></p>
<p><b>You must apply for consent to buy one home to live in if...</b></p>	<div style="text-align: center; font-size: 2em; margin-bottom: 10px;">2</div> <ul style="list-style-type: none"> <li>• You have a New Zealand Permanent Resident or Resident visa and do not live in New Zealand.*</li> <li>• You have an Australian or Singaporean Permanent Resident visa and do not live in New Zealand.*</li> </ul> <p><small>*To get consent you'll need to live in New Zealand, and if you stop living here, you'll have to sell.</small></p>
<p><b>You can't buy one home to live in if...</b></p>	<div style="text-align: center; font-size: 2em; margin-bottom: 10px;">✗</div> <ul style="list-style-type: none"> <li>• You have a Temporary visa, such as a visitor, student, working holiday, or work visa (you don't have a Permanent Resident or Resident visa).</li> </ul> <p>There are other ways you may be able to invest in property.</p>

## Check if you can buy

Visit the Ministry of Business, Innovation & Employment website at <https://www.newzealandnow.govt.nz/overseas>



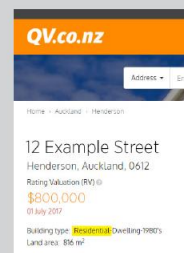
## OVERSEAS INVESTMENT OFFICE



Land Information  
New Zealand  
Toitū te whenua

### What types of homes are affected?

These laws apply to homes that are classed as 'residential' or 'lifestyle' on the District Valuation Roll. You can check properties on websites, such as [www.qv.co.nz](http://www.qv.co.nz), or ask the local council.



### Everyone must make a 'Statement'

All buyers must complete a Residential Land Statement to say whether they are eligible to buy. Your conveyancer can help you do this.

If you must apply or cannot buy, it is especially important that you first talk to your conveyancer before you sign the sale and purchase agreement. If you need to sign it urgently, you can make the agreement conditional on the consent of the Overseas Investment Office.

If you need consent, but sign an unconditional agreement without it, you may face significant penalties. If you make a false statement, you could be fined up to \$300,000.

### Apply for consent

To apply to the Overseas Investment Office for consent to buy one home to live in visit [www.linz.govt.nz/oio/live](http://www.linz.govt.nz/oio/live).

### Learn more

This leaflet gives general guidance for people who want to buy a home to live in. There are special rules for overseas people who want to invest in New Zealand property, but not live in it, including buying rental property or land that is rural or next to a lake, river, reserve or the sea.

These rules are complex, and you will need the help of a New Zealand property lawyer. Visit the Overseas Investment Office at [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio) to learn more.

**Source:** <https://www.linz.govt.nz/overseas-investment/information-for-buying-or-building-one-home-live#can-you>



## Appendix 8 – OIA – Residential Land Statement

# OVERSEAS INVESTMENT OFFICE



## Residential Land Statement

### Section 51A of the Overseas Investment Act 2005

A separate Residential Land Statement will need to be completed for each individual or entity (non-individual/corporate).

Individuals complete Part 1a, entities (non-individual/corporate) complete Part 1b.

#### Part 1a Individuals

☐ I am an individual completing the statement for myself (*purchasing the residential land in your own name*)

#### Am I eligible to buy under the Overseas Investment Act 2005?

(Tick which applies)

☐ Yes, I am a current New Zealand citizen

☐ Yes, I am an Australian or Singaporean citizen buying residential land only

☐ Yes, I hold a New Zealand residence class visa **or** Australian or Singaporean Permanent Resident visa **and all of** the following applies:

- I have been residing in New Zealand for at least the immediately preceding 12 months; and
- I am a tax resident in New Zealand; and
- I have been present in New Zealand for 183 days or more in the immediately preceding 12 months.

☐ Yes, I am an Australian or Singaporean Citizen buying residential land that is also sensitive for another reason and I have consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

☐ Yes, I have consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

☐ Yes, an exemption applies

→ Please provide Overseas Investment Office case number or statutory reference

If you require consent and have not applied, or an exemption does not apply, contact the Overseas Investment Office or seek legal advice.

#### Part 1b Entities (non-individual/corporate)

(Tick which applies)

☐ I am completing the statement for a body corporate, company, partnership or other entity

☐ I am completing the statement for someone else under an enduring power of attorney or on behalf of trustees of a trust

→  Please attach a certificate of non-revocation if you are acting under an enduring power of attorney

#### Is the entity eligible to buy under the Overseas Investment Act 2005?

☐ Yes, the entity is neither an overseas person nor an associate of an overseas person

☐ Yes, the entity has consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

## Part 2

### Name(s) of person or entity

What is the full name(s) of the person or entity that will appear on the record of title as the new owner(s)?

## Part 3

### The residential land being acquired

What is the record of title reference for the residential land or the street address?

## Part 4

### Signature

I certify that all of the information in this statement is true and correct.

Your name

Signature

Date signed

Position or office  
held (if signing  
as an authorised  
person)



#### You must provide this statement to your conveyancer or lawyer

Conveyancers will rely on the information provided in the statement in giving effect to the acquisition of the interest in residential land.

Providing a statement that is false or misleading is an offence under the Overseas Investment Act 2005 and you may be liable for a penalty of up to \$300,000.

Contact the Overseas Investment Office

Phone: 0800 665 463 (in NZ) or +64 7 974 5595 (if overseas)

Email address: [oio@linz.govt.nz](mailto:oio@linz.govt.nz)

Website address: [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio)

New Zealand Government

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