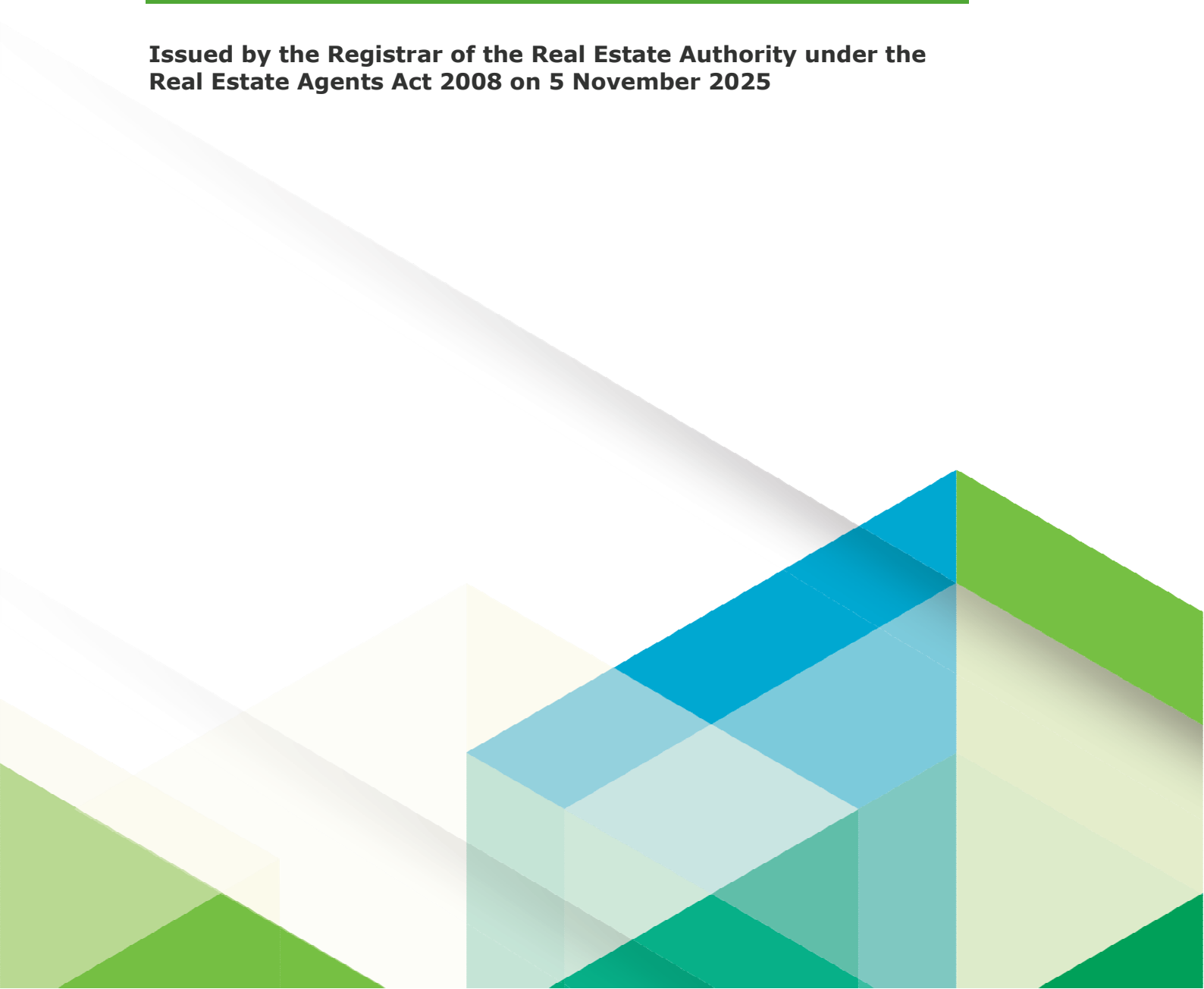

Understanding and Managing Conflicts of Interest under the Real Estate Agents Act 2008

Issued by the Registrar of the Real Estate Authority under the
Real Estate Agents Act 2008 on 5 November 2025



Understanding and Managing Conflicts of Interest under the Real Estate Agents Act 2008

Introduction

Conflicts of interest can arise in real estate work and, if not properly managed, can undermine the trust and confidence of the profession, and lead to disciplinary action. It is critical that licensees identify potential conflicts early and take appropriate steps to manage them transparently and ethically.

The Real Estate Agents Act 2008 and related rules in the Code of Conduct set clear expectations about managing conflicts. This document is issued by the Registrar of the Real Estate Authority as guidance for the real estate sector in accordance with the purposes of the Real Estate Agents Act 2008. It has been prepared following feedback from licensees including representatives participating in REA's Industry Advisory Groups. It is intended to assist licensees in understanding and meeting their obligations relating to conflicts of interest. However, it is not a substitute for legal advice and should not be relied on as a definitive interpretation of the law. If licensees are unsure about how the rules apply to their circumstances, they are strongly encouraged to seek independent legal advice. Licensees should also be aware of their agencies internal policies and procedures around managing conflicts of interest.

Sections 134, 135 and 137 of the Act set out specific obligations on licensees in relation to conflicts of interest

1. Section 134 of the Act places restrictions on a licensee where the licensee themselves (s134(1)), or a person related to them (s134(2)) may acquire an interest in the property for which they are carrying out real estate agency work. Section 134(7) extends the definition of "client" beyond the relationship between the agent and client to include any salesperson or branch manager who helps to carry out real estate agency work for that client.
2. Section 134 outlines that if a person related to the licensee undertaking the real estate agency work seeks to acquire (directly or indirectly) any legal or beneficial interest in the property then the licensee must obtain consent from the client for whom they are carrying out the real estate agency work.
3. Section 134(3) states that a client's consent is only effective if:
 - a. It is given in the prescribed form (Form 2 of the Real Estate Agents (Duties of Licensees) Regulations 2009); and
 - b. The client is provided with a valuation that complies with section 135.
4. Section 135 of the Act requires that the valuation is done by an independent registered valuer or, in the case of a business, by an independent qualified statutory accountant. The valuation must be given either:
 - a. Before seeking the consent from the client; or
 - b. With the agreement of the client, within 14 days of obtaining that consent.

5. Section 137(1) outlines that a “licensee” for the purposes of section 134 includes, in the case of an agent that is a company, every officer and shareholder of that company. Section 137(2) of the Act provides an exhaustive list of the “related persons” that will engage the requirements of section 134. Relationships outside this list will not engage the requirements of ss 134 and 135 but licensees (including agencies) should consider whether they are nevertheless in a position of conflict (or perceived conflict) which might require disclosure in fairness through their more general obligations under the Code of Conduct (e.g. rules 6.1 and 6.4).
6. If the requirements of s 134 are not followed:
 - a. The client is entitled to cancel the contract; and
 - b. There is no entitlement to commission (regardless of whether the contract is cancelled or not).

In summary this means that:

7. A licensee is “conflicted” and subject to the requirements of the Act and the rules if a person “related” to that licensee (as defined in s137(2)) seeks to purchase the property the licensee is selling. The conflicted licensee may be a licensed individual, and/or the licensed agent or agency under which the property has been listed.
8. Any licensee who is carrying out real estate agency work on a transaction (which includes the salesperson(s), listing licensee(s) and listing agent) and is conflicted because someone related or associated to the licensee by virtue of relationships listed in s 137 of the Act seeks to buy the property, must obtain the client’s consent on Form 2 and is required to pay for and provide a valuation to the client. In other words, **it is the licensee who has the conflict of interest who is required to obtain consent and pay for the valuation.**
9. The list of related people in s 137 needs to be considered in terms of their relationship to the licensee(s) carrying out real estate agency work on the transaction. If another licensee at an agency is related to the purchaser but that licensee is not involved in the transaction, then that licensee does not have a conflict of interest under ss 134-137 of the Act. Likewise, if the relative of a non-licensed person working at the agency wants to purchase the property there will be no conflict under ss 134-137. However, as noted above, consideration should be given to whether this relationship ought to be disclosed to the client under rules 6.4/6.1.
10. The agency itself can become conflicted and subject to the obligations under s134 and Form 2, if the agency is the listing agent and a licensee engaged by the agency (s 137(2)(c)) or other employee (s 137(2)(b)) wishes to purchase the property. A conflict exists if the agency has the agency agreement with the vendor. A conflict will not usually extend to other separate agencies operating a franchise under the same brand if they are operating under a different agent licence. Note, however, that an agent of single agency brands operating under a branch structure may be conflicted if an employee or a licensee they engaged across any of the branches wishes to purchase the property, if they are the listing agent for all branch sales.
11. Agencies themselves will not be conflicted if a relative (listed in s 137) of a licensee engaged by them wishes to purchase a property the agency is listing (but the licensee will however be conflicted). Agencies are most likely to be conflicted if an employee or licensee engaged by them wishes to purchase the property.

12. An officer (i.e. manager – see definition in section 4 of the Act) or shareholder of a company agent is subject to the conflict rules. This means that a conflict arises if an officer or shareholder of a listing agent company (or someone related to them) seeks to purchase the property listed by their agency.
13. Where there are two conflicted parties (e.g. the listing agent and listing salesperson), REA does not have a view on which party should pay or provide the valuation. If two parties are connected to the same conflict, the important point is that a valuation is provided and paid for by the conflicted party(ies) not the vendor.
14. These principles are demonstrated by reference to examples in the table below (please note these examples are intended to be illustrative only):

	Example	Conflicted party
1	Licensee 1 is the listing salesperson. Someone related to licensee 1 by virtue of s 137 (e.g. their spouse) wants to buy the property.	Licensee 1 is conflicted and must provide the valuation to the vendor at their expense and obtain Form 2 consent.
2	Licensee 1 is the listing salesperson at Agency A, and Agency A is the listing agent. Licensee 1 wants to buy the property.	Licensee 1 and Agency A are both conflicted. Licensee 1 is conflicted by virtue of s 134(1) as they are seeking to buy the property and carrying out real estate agency work on the transaction. The Agency is conflicted by s 134(2) because they are the listing agent on the agency agreement (and therefore undertaking real estate agency work) and a person related to them (a salesperson engaged by them (s 137(2)(c)) is seeking to purchase the property. The obligation is therefore on both of them to provide the valuation at their cost and obtain Form 2 consent.
3	Licensee 1 is the listing salesperson. Licensee 2 introduces a buyer (i.e. their spouse) to the property and becomes a selling licensee (under conjunctual arrangements). Licensee 2's spouse is a related party under s 137.	Licensee 2 is conflicted as they are conducting real estate agency work on the transaction as a selling licensee. They must therefore provide and pay for the valuation and obtain Form 2 consent.
4	Licensee 1 is the listing salesperson at Agency A and Agency A is the listing agent. Licensee 2 (salesperson) also works at Agency A but is not involved in the transaction at all. Licensee 2's nephew wishes to buy the property. There is no conjunctual arrangement.	In this scenario the strict requirements of sections 134-137 are not engaged as long as Licensee 2 has not conducted any real estate agency work on the transaction, and Licensee 2 obtains no beneficial interest in the property. This is because Licensee 2's nephew is not a related party to Licensee 1 or Agency A and Licensee 2 is not conducting any real estate agency work on the transaction. Although the formal Form 2 requirements aren't engaged in this scenario, you should consider whether to

	Example	Conflicted party
		disclose the relationship to the client in fairness (under rules 6.4/6.1).
5	Licensee 1 is the listing salesperson at Agency A and Agency A is the listing agent. Licensee 2 also works for Agency A and wants to buy the property and conducts real estate agency work as a selling licensee for the property.	In this scenario both Licensee 2 and Agency A are conflicted. Licensee 2 is conflicted because they are conducting real estate agency work for the vendor. Agency A is conflicted through s 134(2) because a person related to Agency A (Licensee 2 is engaged by them – see s 137(2)(c)) is seeking to purchase the property and Agency A is carrying out real estate agency work on the transaction (as the listing Agent). The obligation is therefore on both of Agency A and Licensee 2 to provide the valuation and obtain Form 2 consent.
6	A property is listed with Agency A. Licensee 1 is the listing salesperson. Licensee 2 also works for Agency A and wants to buy the property (in their personal capacity without conducting any real estate agency work on the transaction).	Agency A is conflicted because a salesperson engaged by them is seeking to purchase the property (s 137(2)(c)) and Agency A is carrying out real estate agency work on the transaction. Agency A, as the conflicted party under the Act, has the obligation to provide the valuation and obtain Form 2 consent.
7	A property is listed with Agency A. Licensee 1 is the listing licensee. A receptionist employed by Agency A wants to buy the property.	Agency A is conflicted because a person employed by them is the prospective purchaser (s 137(2)(b)) and Agency A is carrying out real estate agency work on the transaction. Agency A must therefore provide the valuation and obtain Form 2 consent.
8	A property is listed with Agency A. Licensee 1 is the listing licensee. An admin assistant employed by Licensee 1 (but not by the Agency) wants to buy the property.	Licensee 1 is conflicted because a person employed by them is the prospective purchaser (s 137(2)(b)). Licensee 1 must therefore provide the valuation and obtain Form 2 consent.
9	A property is listed with Agency A. Licensee 1 is the listing licensee. Agency B is a franchise under the same banner as Agency A but is operating under a different Agent licence. Licensee 2 works for Agency B and wishes to buy the property, they have not conducted any real estate agency work on the transaction.	There will be no conflict through ss 134-137 of the Act because Agency A is the agency doing real estate agency work on the transaction and Licensee 2 is employed by Agency B. Although the formal Form 2 requirements aren't engaged in this scenario, you should consider whether to disclose the relationship to the client in fairness (under rules 6.4/6.1).

	Example	Conflicted party
10	A property is listed with a South Island Franchise of Agency A. The South Island Franchise has its own agent which is the listing agent. Licensee 1 is the listing salesperson. Licensee 2 is engaged by a North Island Franchise of Agency A (which has a separate agent's licence to the South Island Franchise) and is not involved in the transaction. The niece of Licensee 2 seeks to buy the property.	There will be no conflict through ss 134-137 of the Act because Licensee 2 is not conducting real estate agency work on the transaction.
11	A property is listed with a South Island Franchise of Agency A. The South Island Franchise has its own agent which is the listing agent. Licensee 1 is the listing salesperson. An administrative assistant employed by the North Island franchise of Agency A (which has a separate agent's licence to the South Island Franchise and is not involved in the transaction) wishes to purchase the property.	There will be no conflict through ss 134-137 of the Act because the administrative assistant is not employed by the South Island franchise which is the agency conducting real estate agency work on the transaction.
12	A property is listed by a South Island branch of Agency A (Agency A holds the agency agreement with the vendor), an employee of Agency A who works at the North Island branch (which does not have a separate agent's licence) wishes to buy the property.	Agency A will be in conflict because they have the agency agreement with the vendor and is undertaking real estate agency work in relation to the sale. A person employed by them seeks to buy the property. Agency A must therefore provide the valuation and obtain Form 2 consent.
13	Agency A is the listing agent. Shareholder 1 of Agency A wants to buy the property.	Agency A is conflicted under s 134(1) and must provide the valuation and obtain Form 2 consent.

Form 2 and provisional valuations:

15. "Form 2" is the consent form prescribed in the Real Estate Agents (Duties of Licensees) Regulations. Form 2 repeats the requirements of ss 134-135 and 137 and provides the client's consent to a licensee or person related to them obtaining an interest in the land or business being sold. It provides for consent given either on the basis of an independent valuation or on the basis of a "provisional valuation".
16. The Real Estate Agents Disciplinary Tribunal has confirmed in its decisions in *Advantage Realty Ltd v Real Estate Agents Authority*¹ and *Tremain Real Estate (2012) Ltd v Real Estate Agents Authority (CAC 403)*² that **the provisional valuation figure is to be the appraised value.**

¹ *Advantage Realty Ltd v Real Estate Agents Authority* [2015] NZREADT 83 and *Advantage Realty Ltd v Real Estate Agents Authority* [2016] NZREADT 6.

² *Tremain Real Estate (2012) Ltd v Real Estate Agents Authority (CAC 403)* [2018] NZREADT 54.

17. In *Tremain*, the issue was raised that appraisals are often given in a value range (rather than a specific figure) raising the question of where the provisional value should be set within that range. The Tribunal stated that:

"[69]....We do not consider it appropriate for the Tribunal to direct licensees as to what figure they should enter on Form 2 as the provisional value, if they have chosen to express their appraised value as a range. It is the licensee's obligation to set the provisional value.

[70] Licensees should bear in mind that the appraised value must realistically reflect current market conditions, and that in allowing licensees to enter a provisional value rather than wait for an independent valuation, the intent of s 135 is that the provisional value is "the nearest thing" to an independent valuation. They should also bear in mind that the written appraisal they are required to provide under r 10.2 must form the basis for the "estimated cost (actual \$ amount)" of commission they must provide under r 10.6(a)."

18. It is the licensee(s) that have the conflict who must arrange for Form 2 to be completed and must pay for and provide the valuation. If there is more than one conflicted licensee, it is arguable that only one valuation is required.

Fiduciary obligations remain

19. The Court of Appeal has confirmed that while s 134 impliedly authorises the licensee to continue conducting real estate agency work on a transaction where informed consent is given by the client, the overall fiduciary obligations to the client (rule 6.1) remain and the client's best interests must be considered.³ This includes ensuring that the client is aware of the nature of the conflict and the risks it poses to their interests.⁴ Licensees should consider that their primary responsibility remains to act in the best interests of their vendor client and this extends beyond just complying with s 134-137 of the Act.⁵ For example, the Complaints Assessment Committee decision, which the Court endorsed, discussed having in house policies which ensured an arm's length transaction by having negotiations conducted by someone other than the conflicted licensee.⁶

Conflict may still arise outside of ss 134-137

20. Conflicts of interest can still arise outside of the relationships prescribed by s 137 of the Act. Though they will not engage the consent and valuation requirements of ss 134-135, a licensee may be at risk of breaching a number of the obligations in the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (**Code of Conduct**) if these interests are not carefully disclosed, for example rules 6.1 or 6.4.
21. Licensees should always have at the front of their mind their overarching duty to the client as their fiduciary and their obligation to treat all parties fairly.

³ *Barfoot and Thompson Ltd v Real Estate Agents Authority* [2016] NZCA 105

⁴ At [44].

⁵ At [48].

⁶ Courts endorsement of the Committee decision n 3 at [49], Committee decision reference C03049.