

# 2012 Code of Conduct

## Frequently Asked Questions

### Overview

The Authority has updated the Real Estate Agents Act (Professional Conduct and Client Care) Rules (the Code of Conduct). The 2012 Code of Conduct updates and replaces the existing 2009 Code of Conduct.

It is important that real estate licensees read and familiarise themselves with the new Code of Conduct and understand what the changes mean to them. If you are a licensee then you should make sure you have a sound knowledge of the Code – this is a legal obligation under rule 5.2.

These frequently asked questions are written for real estate licensees but contain information that will be important for buyers and sellers. If you are someone who advises buyers and sellers then you should become familiar with the 2012 Code of Conduct so that you can give them the right advice about what they can expect from a licenced real estate professional.

**Q: When does the new Code of Conduct come into effect?**

**A** The 2012 Code of Conduct comes into force on 8 April 2013 and will be used for all enquiries about matters that take place after this date.

We will still use the 2009 Code of Conduct for investigations where the event happened before 8 April 2013.

**Q Who does the new Code of Conduct apply to?**

**A** The 2012 Code of Conduct applies to all real estate licensees in all sectors of the real estate industry. Some parts of the 2012 Code only apply in specific situations (e.g. rule 11 which applies when representing a buyer instead of a seller) or to specific types of licence holders (e.g. most of rule 8 only applies to agent licensees).

**Q Why did we move the rule about disclosure of defects (rule 6.5)?**

**A** Rule 6.5 (rule 10.7 in the 2012 Code) only applies when a licensee is representing a seller, or 'vendor' and cannot apply when someone is representing a buyer as they have no land they are looking to sell. Therefore we moved the disclosure of defects rules from Rule Six into Rule Ten.

## Rule Eight      Duties & obligations of agents

### Q      Who is considered an ‘agent that operates as a business’?

**A**      An agent that operates as a business is an agency or a licensee with an agent licence who is running a business. For example if you are a director of an agency, or are the owner-operator of a real estate franchise then this rule applies to you.

Rule 8.3 does not apply to salespersons who are contractors to agencies, or agent licensees who are not operating a business.

### Q      What does rule 8.3 actually require?

**A**      Rule 8.3 requires agencies, and any agent operating as a business, to make sure that supervision and management is occurring in their business. This can best be done through having comprehensive policies and procedures setting out how staff should be supervised and managed in your business.

This rule does not create new standards for what is expected as a part of proper supervision and management. Supervision and management requirements are set out in section 50 of the Act

## Rule Nine      Client and customer care

### Q      How long is a “reasonable amount of time” to give a consumer who wants to obtain legal advice before signing a contract?

**A**      A reasonable period of time often differs. If someone decides they need legal advice on a weekend then they should be given an opportunity during the week to contact a lawyer. For a normal residential sale<sup>1</sup> contract someone should be able to obtain appropriate legal advice within 2 working days. For complex transactions and contracts a buyer or seller may require more time.

### Q:      Do I need to get a consumer to acknowledge in writing that they have received a recommendation to get legal advice?

**A**      Rule 9.7 does not require a licensee to put their recommendation to seek legal advice in writing. However, it would be wise for a licensee to ensure that there is some form of written record of this important recommendation having taken place – especially where a consumer indicates that they do not want to seek legal advice. To avoid any doubt, it would be good practice to regularly document your recommendations to your clients via email.

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<sup>1</sup> For example using the most recent version of the ADLS / REINZ Agreement for Sale and Purchase.

**Q: Does rule 9.11 mean that I no longer have the right to claim a commission if I miss a person's name off the list I provided and that person transacts with my ex-client?**

**A** Rule 9.11 does not interfere with an agent's contractual right to a commission.

Rule 9.11 arms sellers with enough information to proactively identify situations where they might be exposing themselves to double commissions before they sign a sale and purchase agreement.

If a customer's name is not on the list provided by an agent and then that agent seeks to claim a commission, the agent may find themselves having to answer a complaint.

## **Rule Ten Client and customer care for sellers' agents**

**Q: Do I have to do a written appraisal?**

**A** Yes, if your client is selling real estate or a business then you must conduct an appraisal. This is a prerequisite for completing your duties under rule 10.6. Without an appraisal price you are unable to give your client a reliable estimate of how much your agency's commission is going to cost them.

**Q Can an appraisal price be a price range?**

**A** Yes an appraisal can include a price range. However, in line with industry best practice and training, this price range should have no more than 5% variance above and below the most probable selling price.

If you do use a price range in your appraisal make sure that your client knows what this means and remember that you will still have to set out how much (in dollars) they will have to pay for commission.

**Q Why does rule 10.5 require me to explain to a seller how much I will earn from the sale of their property?**

**A** Rule 10.5 is designed to increase transparency between licensees and prospective clients.

When working with a prospective client, licensees routinely give the seller advice and guidance on the best way to sell their property, including the method of sale and how it should be marketed.

When that advice has direct impact on the benefits for the licensee (e.g. income, rebates or commission splits), the impact needs to be explained. This is because licensees are about to enter into a fiduciary relationship with that seller. Therefore, they should be as transparent as possible in order to honour the duties and obligations that come with being someone's agent.

**Q What counts as a benefit for the purposes of rule 10.5?**

**A** Commission split, rebates and discounts all count as benefits for the purposes of rule 10.5. We have purposely kept rule 10.5 broad to ensure that it captures all forms of relevant benefits that licensees currently receive, or may receive in the future.

If you are an agent then you should review the benefits that you offer your licensees (and yourself) to identify and catalogue the benefits that your licensees receive to enable them to comply with this new obligation.

**Q Does rule 10.5 require me to tell a seller how much I earn in dollars?**

**A** No, you do not have to disclose your actual income to a seller. Rule 10.5 requires you to explain what the differences in your individual benefits would be, depending on the decisions the seller takes about how to sell or market their property or business. What is important is that you explain the difference in a way that the seller can understand.

**Q Do I have to explain my individual benefits in writing?**

**A** The 2012 Code of Conduct does not require you to make this disclosure in writing. One good way of doing this could be to discuss the fact that there are differences and then set out on paper the differences between the options that the seller is actually considering.

Documenting, and confirming (for example by email), your discussions with clients and customers is best practice and allows you to be sure what you have previously said and what undertakings and representations you have, or have not, made.

**Q What if there are no differences to my individual benefits?**

**A** If nothing the seller chooses to do, or not do, affects your income or benefits then there is nothing to explain. You may want to mention that licensees have a duty to explain the impacts the client's choices have on in their benefits.

**Q What counts as evidence or expert advice to support confirmation from a seller that a property is free from defect?**

**A** Exactly what can be considered evidence or expert advice depends on the nature of the suspected defect. For example, if a licensee suspects that land is subject to subsidence due to its location, an engineering or geological report stating the property is free of subsidence would be considered expert advice.

This change to rule 10.7 is designed to ensure that when licensees obtain confirmation from clients about possible defects that they are satisfying their concerns with reliable information rather than potentially uninformed opinion.

A real estate professional who suspects that real estate may have a defect should not just take a client's word that their land is not subject to a defect without some form of dependable information.

## **Rule Eleven Client and customer care for buyers' agents**

**Q** If my client (a seller) tells me they are wanting to purchase a new home and says “let me know if you have anything with X, Y features”, do I have to complete a buyers agency agreement with them?

**A** No. If a client of yours is asking you to recommend to them any of the other properties that you, or your agency, are selling on the behalf of another client you can either refer them on, or show them the property, as per normal practice in your agency. However, you should make it clear to them that, in this instance, you are not representing them – you are representing the seller instead.

**Q** Do I need a buyers agency in order to get a work-in or conjunctional?

**A** No you do not. If you have a prospective purchaser that you think would like a property that someone other than your agency has listed, then you are best to contact the other agency to arrange a conjunctional or work-in arrangement.

If you are actively working for a buyer to find them a property or a business that your agency does not have an agreement to sell, then you should consider becoming their agent.

**Q** What is the difference between doing a conjunctional and being a buyer’s agent?

**A** The difference is who you are representing. In a conjunctional you work in with another agent and their client becomes your client. A buyer’s agent represents the buyer, not the seller and has obligations to the buyer.