

## Real Estate and Business Agents and Sales Representatives Code of Conduct 2016

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## Real Estate and Business Agents and Sales Representatives Code of Conduct 2016

Made under section 101 of the Act by the Commissioner.

### Part 1 — Preliminary

#### 1. Citation

This code is the *Real Estate and Business Agents and Sales Representatives Code of Conduct 2016*.

#### 2. Commencement

This code comes into operation as follows —

- (a) rules 1 and 2 — on the day on which this code is published in the *Gazette*;
- (b) the rest of the code — on the day after that day.

#### 3. Terms used

- (1) In this code, unless the context otherwise requires —

*Act* means the *Real Estate and Business Agents Act 1978*;

*agent* means a licensed agent;

*client* —

- (a) of an agent or sales representative, includes, where the context permits, a prospective client; and
- (b) of a sales representative, includes a client of a licensee or developer, who is the employer, principal or partner of the sales representative;

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**commission** includes a fee, charge or other remuneration, whether monetary or otherwise;

**regulations** means the *Real Estate and Business Agents (General) Regulations 1979*;

**transaction** includes the negotiation of a transaction.

- (2) A term has the same meaning in this code as it has in the Act unless the contrary intention appears in this code.

**4. Code applies to all agents and sales representatives**

- (1) Each agent or sales representative acting for a client must comply with this code.
- (2) Subrule (1) applies to, and in respect of, all agents or sales representatives including where the agent or sales representative is a principal of a business or an employee of a licensee.

## **Part 2 — General duties**

**5. Acting in best interests of client [Amends 2011  
Code section 4]**

When acting for a client an agent or sales representative must act in good faith in the best interests of the client.

**6. Duty of care, diligence and skill [Amends 2011  
Code section 9]**

When acting for a client an agent or sales representative must exercise due care, diligence and skill.

**7. Duty of honesty [Amends 2011 Code section 7(1)]**

When acting for a client an agent or sales representative must be honest in all dealings with the client, other agents and sales representatives, and other persons involved in a transaction.

**8. Disclosure where related to vendor [New rule]**

- (1) When acting for a client who is a vendor an agent or sales representative who is related to the vendor as described in subrule (2) must disclose that in writing to each purchaser.
- (2) An agent or sales representative is related to a vendor if the agent or sales representative —
  - (a) has a controlling interest in the vendor; or
  - (b) is a spouse, child, grandchild, sibling, parent or grandparent of the vendor.

**9. Confidential information [Amends 2011 Code section 13]**

- (1) An agent or sales representative must treat as confidential information obtained while acting for a client that has not been made public and that —
  - (a) is by its nature confidential; or

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- (b) was specified as confidential by the person who supplied it; or
  - (c) is known by the agent or sales representative to be confidential.
- (2) Information to be treated as confidential under subrule (1) must not, directly or indirectly, be disclosed by an agent or sales representative to another person, unless —
  - (a) the disclosure of the information is required by law; or
  - (b) the client is fully informed of the proposed disclosure and agrees to it in writing.

**10. Client's instructions [Amends 2011 Code section 6(2)]**

When acting for a client an agent or sales representative must —

- (a) provide each service relating to the client's instructions within a reasonable time after receiving the instructions; and
- (b) act in accordance with the client's reasonable instructions.

**11. Misleading or deceptive conduct [Amends 2011 Code section 7(2)]**

When acting for a client an agent or sales representative must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive within the meaning of the *Australian Consumer Law (WA)* Part 2-1.

**12. Unconscionable conduct [Amends 2011 Code section 7(3)]**

When acting for a client an agent or sales representative must not engage in unconscionable conduct within the meaning of the *Australian Consumer Law (WA)* Part 2-2.

**13. Fiduciary obligations [\[New rule\]](#)**

An agent or sales representative must comply with any obligation that may arise as a result of any fiduciary relationship between the agent or sales representative and a client.

Consultation Draft

## **Part 3 — Employees**

### **14. Supervision and control of employees [Amends 2011 Code section 8]**

- (1) In this rule —  
*agent who carries on a business* means —
  - (a) an agent who personally carries on a business; or
  - (b) a person in bona fide control of a business carried on by a body corporate; or
  - (c) a person in bona fide control of a business carried on by a firm.
- (2) An agent who carries on a business must take all reasonable steps to ensure that every person employed in or engaged by the business whether paid or unpaid complies with —
  - (a) the provisions of the Act, the regulations and this code as are applicable to the person; and
  - (b) any other law applicable to the business and the person.
- (3) An agent who carries on a business is responsible for the supervision and control of the work of every person employed in or engaged by the business whether paid or unpaid.
- (4) An agent who carries on a business must —
  - (a) personally manage the business; and
  - (b) frequently attend the offices at which the business is carried on.



## Part 4 — Conflict of interest

### 15. Acting for multiple clients in same transaction

An agent or sales representative must not act for more than one client in a transaction unless before the agent or sales representative begins so acting, the clients gave the agent or sales representative fully informed written consent to the agent or sales representative acting for more than one client in the transaction.

### 16. Referrals and recommendations [\[Amends 2011 Code section 18\]](#)

(1) In this rule —

**supplier** means a person supplying any goods or services and includes a finance broker and a settlement agent.

(2) An agent or sales representative who recommends a supplier to a client must disclose in writing to the client —

- (a) any significant relationship, connection or affinity between the agent or sales representative and the supplier; and
- (b) any potential conflict of interest, and the nature of that potential conflict of interest, arising from the relationship, connection or affinity referred to in paragraph (a).

(3) An agent or sales representative who recommends —

- (a) a supplier, other than a settlement agent, to a client must disclose in writing to the client any commission accepted, directly or indirectly, by the agent or sales representative from any person for the recommendation; or
- (b) a settlement agent to a client must not accept, directly or indirectly, any commission from any person for the recommendation.

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- (4) Before being appointed to act by a client who has been referred by any person to an agent or sales representative, the agent or sales representative must disclose in writing to the client any commission paid or given, directly or indirectly, for the referral by the agent or sales representative.

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## **Part 5 — Appointment and payment of fees**

### **17. Appointment to act [Amends 2011 Code section 6(1)]**

- (1) An agent or sales representative who does not have an appointment to act from a person must not —
  - (a) act as an agent or sales representative for the person; or
  - (b) represent that the agent or sales representative is acting on behalf of the person.
- (2) An agent or sales representative must obtain the written agreement of the client that the agent or sales representative agreed to act for in an appointment to act before any change is made to the appointment to act.

### **18. Restriction on discounts and rebates [Amends 2011 Code section 15]**

- (1) An agent or sales representative must not demand or receive a discount or rebate that relates to a service provided by a service provider, in connection with a transaction or a service provided to a client by the agent or sales representative, unless the agent or sales representative has —
  - (a) disclosed to the client the full nature, extent and amount of the discount or rebate; and
  - (b) obtained the written consent of the client to the demanding or receiving of the discount or rebate by the agent or sales representative.
- (2) In subrule (1), a service provider includes a stocktaker, tradesperson and a person providing a service relating to advertising.

### **19. Further restriction on reward for service [Amends 2011 Code section 16]**

An agent or sales representative must not demand or receive a commission, reward or other valuable consideration from any person for the provision of a service that is —

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- (a) greater than the amount agreed in writing with the client; or
- (b) unjust in the circumstances; or
- (c) not initialled on the agreement by the client.

**20. Claiming expenses from client [Amends 2011 Code section 17]**

- (1) If an agent or sales representative is entitled to demand or receive reimbursement from a client of an expense that the agent or sales representative has incurred, the agent or sales representative must promptly give to the client all information that the client may reasonably require in order to be satisfied —
  - (a) as to the amount of the expense; and
  - (b) that the expense was properly incurred by the agent or sales representative.
- (2) An agent or sales representative must not demand or receive reimbursement of an expense that the agent or sales representative has incurred in respect of advertising, sign boards, printed material and promotions unless —
  - (a) the client has agreed in writing to pay the expense; and
  - (b) the agreement specifies a maximum amount that the agent or sales representative may demand or receive by way of reimbursement; and
  - (c) the maximum amount is stated on the agreement and has been initialled by the client.

## **Part 6 — Specific duties of agents and sales representatives**

### **21. Terms used**

In this Part —

***business*** means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation or calling;

***lease*** includes let and the acquisition under lease or letting of tenancy or occupation;

***sale*** includes an exchange or other disposal.

### **22. Certain inducements prohibited [Amends 2011 Code section 5]**

- (1) An agent or sales representative must not knowingly induce or attempt to induce a person to breach —
  - (a) an appointment to act; or
  - (b) a contract of sale of any real estate or business; or
  - (c) a contract to lease any real estate or business.
- (2) An agent or sales representative must not knowingly induce or attempt to induce a person to enter into a contract under which the person would be liable to pay a commission to more than one agent or sales representative in relation to a sale or lease of any real estate or business.

### **23. Advertising [2011 Code section 6(3) and (4)]**

- (1) An agent or sales representative must not, without the written consent of a client —
  - (a) advertise that any real estate or business is for sale or lease by the client; or
  - (b) erect or display a notice of sale or lease for the client.

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- (2) When acting for a client an agent or sales representative must not —
  - (a) advertise or offer for sale or lease any real estate or business at a price or on any other terms, other than as authorised by the client; or
  - (b) advertise or offer to purchase or lease any real estate or business at a price or on any other terms, other than as authorised by the client.

**24. Material facts [Amends 2011 Code section 10(1) and 10(2)]**

- (1) Prior to the execution by a client of any contract relating to the sale or lease of any real estate or business the agent or sales representative must make all reasonable efforts to ascertain or verify all facts material to the transaction (the **material facts**) that a prudent agent or sales representative would ascertain or verify.
- (2) An agent or sales representative must promptly communicate a material fact to any person who may be affected by the material fact and appears to be unaware of it.

**25. Client identification verification [Amends 2011 Code section 10(3) and (4)]**

An agent or sales representative who receives instructions to offer real estate for sale must —

- (a) promptly obtain a copy of the certificate of title for the real estate and refer to that copy for the names of the registered proprietor; and
- (b) as soon as practicable after receiving the instructions and before a contract for that sale is executed, make all reasonable efforts to verify —
  - (i) the identity of each person who claims to be, or to act for, a person who is to sell all or any of the real estate; and

- (ii) each person's authority to sell the real estate, or to act for the person selling it.

**26. Duties regarding opinion of market price [Amends 2011  
Code section 11]**

If an agent or sales representative gives a person an opinion as to the current market price of real estate or a business, the agent or sales representative must not act as an agent or sales representative for the person unless the agent gives the person the following in writing —

- (a) a statement of the opinion;
- (b) the reasons on which the opinion is based;
- (c) if available, information regarding the sale of similar real estate or businesses supporting the opinion.

**27. Communicating offers to client [Amends 2011  
Code section 14]**

When acting for a client an agent or sales representative must communicate each offer to the client as soon as practicable after the offer is made.

## **Part 7 — Repeal and transitional**

**28. *Code of Conduct for Agents and Sales Representatives 2011* repealed**

The *Code of Conduct for Agents and Sales Representatives 2011* is repealed.

**29. Transitional**

(1) In this rule —

***transitional period*** means the period of 2 months beginning on the day on which the *Real Estate and Business Agents and Sales Representatives Code of Conduct 2016* (other than rules 1 and 2) comes into operation.

(2) For the purpose of sections 34(1), 50(1), 103(2)(c)(iii) and 103(4)(c)(iii) of the Act, an agent or sales representative to whom this rule applies is to be taken not to have acted in breach of this code.

(3) This rule applies to an agent or sales representative who during the transitional period —

- (a) fails to comply with a provision of this code; but
- (b) complies with the provisions of the *Code of Conduct for Agents and Sales Representatives 2011*.

Commissioner.