



# Authority Update



August 2010

## CEO/Registrar

Since the Authority was established in November last year 2,182 new licences have been issued. As at 16 August 2010 the total number of licences is 17,050.

Please remember, only holders of an agents licence can advertise themselves as a licensed agent and it is an offence to say you are one if you don't hold that class of licence. Branch managers and salespeople can only advertise themselves as a licensed branch manager or salesperson if they hold the relevant class of licence.

We have received a number of questions about the six-month stand down period for salespeople, which is a requirement of [s36](#) of the Lawyers and Conveyancers Act 2006. This section provides that a salesperson cannot do the following until they have at least six months experience:

- Prepare any agreement for sale and purchase of land or any interest in land or of the goodwill of a business or of chattels, or
- Give advice about legal rights and obligations that is incidental to the preparing of an agreement of the kind referred to in paragraph (a).

### Approved Guides

The Authority has now translated the approved guides into Maori, Samoan, Tongan, Chinese, Korean and Hindi as a response to feedback. The new guides are available in PDF format from the Authority's [website](#).

If you are purchasing printed guides (English version only) you can now pay by either credit card or cheque.

### Plastic Evidence of Licence

Please make sure that you take advantage of the free wallet-sized plastic evidence of licence. While it is optional, it does have a number of advantages:

- it is small and convenient - meaning that you can keep it with you at all times
- it is easy to produce on request
- it is durable

- it contains your photo and is a good form of identification to show your clients and members of the public.

Obtaining a plastic evidence of licence simply involves going to your local AA. Your renewal or new licence application confirmation letter contains further information.

### Real Estate Agents Disciplinary Tribunal

The first Real Estate Agents Disciplinary Tribunal (the Tribunal) case is due to be held in August. Currently, three charges are before the Tribunal.

A Complaints Assessment Committee (CAC) may lay charges with the Tribunal if it considers that misconduct is evident.

The Tribunal process is similar to a District Court process. The CAC lays and prosecutes a charge with the Tribunal. Legal Counsel will generally be instructed to act on behalf of the CAC. Authority Investigators will prepare the case for the CAC in conjunction with Legal Counsel.

The Tribunal hearings are expected to be open to the public unless otherwise directed by the Tribunal.

The Tribunal is independent of the Authority and is supported by the Tribunals Unit at the Ministry of Justice. Further information about how the Tribunal works can be found at the [Tribunal's](#) website.

### Margaret Steel

Chief Executive/Registrar (Acting)

## Complaints Update

This section provides high-level information about complaints received by the Authority.

Number of:	Total year ending 30 June 2010	July 2010	TOTAL
Complaints/allegations:	556	62	618
Complaint Assessment Committee (CAC) hearings held:	96	21	117
CAC decisions not to inquire:	26	10	36
CAC determinations made:	59	33	92
- Unsatisfactory Conduct:	6	2	8
- No further action:	51	31	82
- Charges laid before the Disciplinary Tribunal:	2	0	2
Appeals	3	5	8

The most common types of complaints being received by the Authority include.

- Misrepresentation e.g. saying that chattels are included with a property when they aren't.
- Non-disclosure e.g. not disclosing the actual physical condition of a property e.g. a leaky home.
- Incompetency/negligence e.g. not passing on offers.
- Marketing e.g. putting up a sign without permission; taking listings off websites and relisting them without an agreement in place or permission to do this.

- Conduct unrelated to real estate agency work e.g. criminal allegations.
- Commission dispute e.g. failure to adequately and accurately explain the commission that will be charged.
- Undue pressure e.g. saying that the purchaser needs to put in an unconditional offer ASAP as the property won't be on the market for long.
- Conflict of interest e.g. licensee having an interest in the property e.g. through a company that owns it, and not disclosing this.
- Confidentiality breach e.g. disclosing confidential pricing information to a purchaser.
- Unlicensed trading e.g. doing real estate agency work without a licence under the Real Estate Agents Act 2008.

The Authority is also receiving a number of complaints relating to residential property management. CAC's have the ability to consider such complaints if the person complained of is a licensee and the conduct complained of could be misconduct.

You can view the determinations that have been published to date by clicking [here](#).

Keep an eye out for further information on the types of complaints in upcoming newsletters.

## Professional Conduct and Client Care Rules

The Code sets out the standard of professional conduct and client care required of agents, branch managers and salespersons. It is important that all licensees understand the requirements set out in the code. These requirements apply to all aspects of real estate agency work and are be used as a reference point for discipline.

Each newsletter highlights a different section of these rules. This newsletter looks at rule six.

### 6. Standards of professional conduct

- 6.1 An agent must comply with the fiduciary obligations to his or her client arising as an agent.
- 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 fairness be provided to a customer or client.
- 6.5 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Further, where it appears likely, on the basis of the licensee's knowledge and experience of the real estate market\* that land may be subject to hidden or underlying defects, the licensee must either:
  - (a) obtain confirmation from the client 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.
- 6.6 A licensee must not continue to act for a client who directs that information of the type referred to in rule 6.5 be withheld.

*\* For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weather tightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weather tightness 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 6.4.

# Unsatisfactory Conduct Determinations



The following is an overview of unsatisfactory conduct determinations that have been published since the last newsletter. Under [section 78 \(h\)](#) of the Real Estate Agents Act 2008, Complaints Assessment Committees may decide to publish their decisions. This is done to ensure that the disciplinary process remains transparent, independent and effective.

Click [here](#) to read the determinations in full.

**Complaint Number: CA3098901**

**Determination made:** 18 August 2010

**Overview:** The Committee concluded that the licensee did not satisfactorily discharge their professional obligations and that the conduct falls below accepted professional standards in the real estate industry.

**Determination:** Finding of unsatisfactory conduct under [s72\(d\)](#) of the Real Estate Agents Act 2008. Committee prevented from making any orders against the licensee by virtue of the operation of [s172\(2\)](#) of the Real Estate Agents Act 2008

**Please do not reply to this newsletter. If you wish to contact us please call us on 0800for REAA (0800 367 7322) or email us at [info@reaa.govt.nz](mailto:info@reaa.govt.nz).**

## Things to Remember

### Approved Guides:

Licensees are required to provide copies of the relevant approved guide before an agency agreement is signed and before a sale and purchase agreement is signed. You must also get written acknowledgement that the guides have been received.

### Disclosure of rebates, discounts or commissions:

Every agency agreement must contain a statement by the agent about rebates, discounts and commissions. This statement must be as described in [Form 1](#) of the Duties of Licensees Regulations 2009.

### Written appraisals:

An appraisal of land or a business must be provided in writing to a client by a licensee; must realistically reflect market conditions; and must be supported by comparable information on sales of similar land in similar locations or businesses (Rule 9.5 of the Professional Conduct and Client Care Rules 2009).

### Conflict of interest:

Under [section 134](#) of the Act, if a licensee is carrying out real estate agency work directly or indirectly for a client, he or she cannot acquire the property or

business concerned without the consent of the client. The same applies to any person related to the licensee.

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**Trust accounts:**

All money received by an agent in relation to a real estate transaction must be paid to the person who is lawfully entitled to that money, or in accordance with that person's instructions. Until the money has been paid out it must be held in the agent's trust account.

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Further information can be found in the [Compliance](#) section of the Authority's website.

visit: [reaa.govt.nz](http://reaa.govt.nz)

