



Authority Update



December 2011

CEO/Registrar

In this newsletter...

- We update you with where things are at with continuing education.
- We provide some compliance guidance on the leaky home issue, trust accounts, misleading advertising and representation, client communication and name suppression.
- A change has been made to the decision database to improve the accuracy of search results.
- No Tribunal decisions of misconduct have been published since our last newsletter.
- 9 decisions of unsatisfactory conduct have been published since our last newsletter ranging from describing a property as being designed by an architect when it was not to undue pressure and taking too long to return a deposit.

With the departure of Keith Manch on 2nd December, Dean Winter is now the acting CE/Registrar. We are sad to see Keith go and wish him all the best in his new role as the Chief Executive and Director of Maritime New Zealand.

The Board is hoping to announce the new CE later this month.

Continuing education

The continuing education practice rule has been signed off by the Minister and comes into effect on 1 January 2012. The rule was gazetted in the New Zealand Gazette on 17 November 2011.

From 2013, all licensees will need to demonstrate that they have completed the continuing education requirements in order to renew their licence.

Continuing education has two parts. Licensees must complete both parts before re-licensing:

1. **Ten hours of verifiable education:** This is education in relation to complying with the Act, Regulations and Rules. This will be delivered by an approved provider. The verifiable continuing education topic for 2012 is the Professional Conduct and Client Care Rules, with a focus on disclosure.
2. **Ten hours of non-verifiable education:** This includes conferences, in house training, personal

professional development and other industry-based training.

In addition, from 1 January 2013, licensees who are reviving their licence after having suspended it for more than 12 months will need to complete 10 hours of verifiable refresher training when re-entering the industry.

We are currently evaluating applications from organisations who want to become approved providers of continuing education.

A list of approved providers will be available on our [website](#) from mid-December 2011 and we will continue to update you via these newsletters. We will also include information about continuing education and what you need to do in your 2012 licence renewal letters.

The approved providers will set their own fees for providing verifiable continuing education. There will not be a charge from the Authority.

Compliance Guidance Information

Leaky Homes

In the September 2011 newsletter we gave the industry some guidance, based on a Real Estate Agents Disciplinary Tribunal (the Tribunal) decision, which said a licensee cannot avoid liability under rules 6.4 and 6.5 of the Code by simply suggesting that a building report is obtained.

The Tribunal has made another decision which reinforces and expands on this guidance in relation to leaky homes. The key points of this decision are:

- Rules 6.4 and 6.5 of the Code of Professional Conduct and Client Care (the Code) impose a clear duty on licensees towards purchasers. If a licensee knows:
 - the property has been the subject of prior sales which have fallen through following building reports
 - the property is of materials and design which render it likely to be leaky
 - of other units in a complex which are leaky, or
 - suspects from their experience that the property may be a leaky home

Then they must raise the leak issue with the vendor (and get something approaching a vendor warranty that the property is not leaky) or raise the leak issue with the purchaser. If they don't they are in breach of the Code.

- A licensee cannot rely on the fact that the purchaser has obtained their own building report. If the licensee is aware that the home is prone to leaky home syndrome they need to point this out.

This decision is being appealed to the High Court. An interim suppression order is in place pending the appeal to the High Court.

Trust Accounts

A recent Tribunal appeal decision ((2011) NREADT 35) emphasises that great care must be taken with trust account funds. The case involved a payment from an agency's trust account at the direction of only one of the three joint owners of a property. The Complaints Assessment Committee found the agency guilty of unsatisfactory conduct. The agency appealed this decision to the Tribunal who has now directed the CAC to lay a charge of misconduct against the agency.

This appeal decision will be published on the Tribunal's [website](#) (scroll through the decisions until you find

(2011) NZREADT 35).

Information on operating trust accounts can be found on our [website](#).

Misleading Advertising and Representations

The Tribunal has indicated that licensees need to take care when making representations about a property (appeal decision (2011) NZREADT 36). It has indicated that licensees need to take all reasonable steps to verify the accuracy of information (unless they are merely acting as a conduit).

The appeal related to a case ([CA 2837073](#)) where the licensee withheld information and misrepresented a property in an advertisement. The decision of unsatisfactory conduct was upheld by the Tribunal.

This appeal decision will be published on the Tribunal's [website](#) (scroll through the decisions until you find (2011) NZREADT 36).

Client Communication

In a recent unsatisfactory conduct decision against a licensee, the CAC gave some guidance on how licensees can avoid being the subject of a concern about communication.

The CAC recommends that when entering into an agency agreement and listing a property for sale, it is a good idea for licensees to discuss with their client what their preferred methods of communication are e.g. phone, email, text, and when they expect they will need to communicate with their clients throughout the marketing and sales process.

A discussion like this would clarify the licensee's intentions and the client's wishes and expectations and would leave no room for doubt as to when and how contact would be made by the licensee. This will reduce the likelihood of any misunderstanding about what the client expects from their agent.

Applications for Name Suppression

The Tribunal has provided some guidance on name suppression. Name suppression is considered on a case by case basis however the Tribunal will consider the following:

- The interest of any person and public interest.
- The seriousness of the offending.
- The public interest in knowing the character of the person seeking name suppression.
- The circumstances personal to the person appearing before the Court, their family, or those that work with them and the impact upon financial and professional interests.

In general, the Tribunal is cautious about granting name suppression.

Refer to decision (2011) NZREADT 34. This decision will be published on the Tribunal's [website](#) (scroll through the decisions until you find (2011) NZREADT 34).

Decision Database Improvement

A change has been made to the decision database to improve the accuracy of search results.

Two check boxes have been added underneath the main "Search For" box. You use these check boxes to indicate whether you are searching for a "name" or for "everything else". The default is for the name check box to be selected (as the majority of searches done on the database are licensee name searches).

This change fixes an issue where results could be returned on a search for a licensee's name even if there were no decisions against that licensee. Now, if the "name" check box is selected, then the database search is restricted and will only return results for matches on the licensee's name (or part of their name).

If the "everything else" box is selected then the database searches both the abstract and the decision documents. Checking the "everything else" box is the best way to search by complaint number, type of complaint etc.

Dean Winter

Chief Executive/Registrar (Acting)

Complaints Update

Our new compliance approach began on 1 July 2011. The following table provides an overview of concerns received since July (under the new approach).

Number of Concerns:	July-11	Aug-11	Sep-11	Oct-11	Nov-11	TOTAL
Concerns Received:	79	60	83	68	53	343
Intervention*:						
• No Action:	1	1	0	0	0	2
• Consumer Information:	19	17	9	17	7	69
• Compliance Advice:	11	8	5	10	8	42
• Alternative Dispute Resolution (ADR):	**9	3	4	3	1	20
• Investigation***:	43	34	49	28	14	168
• Withdrawn:	0	0	0	0	0	0
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Interventions Currently Underway						
• ADR:						10
• Enforcement:						153
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CAC Decisions:						
• Not to Inquire:	0	0	0	1	0	1
• No Further Action:	0	0	0	3	4	7
• Unsatisfactory Conduct:	0	0	2	1	0	3
• Charges Laid before the Disciplinary Tribunal (by a CAC):	0	0	0	0	0	0
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Appeals:	0	0	0	1	0	1
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Withdrawn Appeals:	0	0	0	0	0	0

* By month concern received. A case can have more than one intervention.

** Includes two cases received under the "old approach" but referred to ADR under the new approach.

*** Includes both CAC directed investigations and Authority initiated investigations.

The table below provides information on complaints we received prior to July 1 that are still in the process of being resolved.

Number of:	July-11	Aug-11	Sep-11	Oct-11	Nov-11	TOTAL
Complaints/Allegations Under Investigation:						88
Withdrawn Complaints:	0	2	0	0	0	2
CAC Decisions Not to Inquire:	6	1	0	2	0	9
CAC Decisions Made:						
• Unsatisfactory Conduct:	16	15	13	9	6	59
• No Further Action:	44	27	37	20	19	147
• Charges laid before the Disciplinary Tribunal (by a CAC):	0	3	1	0	1	5
Total Completed*:	133	47	33	21	36	270
Appeals:	11	13	19	7	3	53
Withdrawn Appeals:	0	0	1	0	1	2

*Includes allegations which may not receive CAC decisions.

Licensing Update

Number of:	TOTAL (as at 30 November 2011)
Active Licences:	13,827
• Company:	836
• Agent:	2,044
• Branch Manager:	529
• Salesperson:	10,418
Suspended Licences:	3,341
• Company:	88
• Agent:	232
• Branch Manager:	87

• Salesperson:	2,934
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The table below shows the number of active and suspended licence, by region, as at 16 November 2011.

Class of Licence:	Active	Suspended
Individual:	12942	3260
• Auckland	5579	1198
• Bay of Plenty	802	246
• Canterbury / West Coast	1503	520
• Gisborne / Hawkes Bay	432	102
• Nelson/Marlborough	423	109
• Northland	468	120
• Otago / Southland	856	194
• Taranaki / Wanganui / Manawatu	697	181
• Waikato	1001	289
• Wellington / Wairarapa	1140	221
• Not specified	41	80
Companies:	836	87
• Auckland	313	24
• Bay of Plenty:	54	7
• Canterbury / West Coast	115	20
• Gisborne / Hawkes Bay	26	1
• Nelson/Marlborough	33	2
• Northland	41	2
• Otago / Southland	65	8
• Taranaki / Wanganui / Manawatu	48	5
• Waikato	77	10
• Wellington / Wairarapa	63	7
• Not specified	1	1
Total:	13778	3347

Real Estate Agents Disciplinary Tribunal Findings of Misconduct



No decisions of misconduct have been published by the Real Estate Agents Disciplinary Tribunal since our last newsletter on 19 September 2011.

Unsatisfactory Conduct Decisions



Below is an overview of the latest unsatisfactory conduct decisions. 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.

You can search for and view the decision documents on our [website](#).

Complaint Number: CA4137447

Decision made: 1 November 2011

Overview: The Licensee breached rules 6.2, 6.3 and 6.4 of the Code of Professional Conduct and Client Care as he passed on what was suspected to be false information about the qualification of building inspection company to conduct a property inspection.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders reprimanding the licensee and ordering them to pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA5106459/CA5106585

Decision made: 28 October 2011

Overview: The Licensees breached rule 9.11 of the Code of Professional Conduct and Client Care as they failed to adequately and properly inform and advise the vendor of the risk of payment of more than one full commission.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensees.

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.

Trust accounts:

All money received by an

Complaint Number: CA4100421

Decision made: 28 October 2011

Overview: Licensee breached section 123(3) of the Real Estate Agents Act 2008 as they released a deposit on a property subject to a notice of requisition without the necessary authority.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensee and ordering them to pay a fine of \$3000 to the Real Estate Agents Authority.

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 a trust account.

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

Complaint Number: CA4100835

Decision made: 19 October 2011

Overview: Licensee breached rules 9.3 and 9.7 of the Code of Professional Conduct and Client Care as he (1) entered information on the sale and purchase agreement without the authority of the complainant (2) got the complainant to sign a multi offer document at a time when there were no other offers on the table and without adequate explanation and understanding by the complainant as to the consequences and (3) misled the complainant about the price that the vendor would likely accept.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensee and ordering them to pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA3706563

Decision made: 30 September 2011

Overview: Licensee took an unacceptable amount of time to return a deposit.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders that the licensee pay the complainant the sum of \$3,725.08 in repayment of expenses incurred and that the licensee pay a fine of \$1,000 to the Real Estate Agents Authority.

Complaint Number: CB5548403

Decision made: 14 September 2011

Overview: Licensee advertised a property without the agreement of the owner or having a signed listing agreement (breach of rule 9.15 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order censuring the licensee.

Complaint Number: CA4112463

Decision made: 19 August 2011

Overview: Licensee described the property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order reprimanding the licensee and ordering them to pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA4103481/CA4103607

Decision made: 17 August 2011

Overview: Licensees described a property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Order reprimanding the licensees and ordering them to each pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA3949509

Decision made: 11 August 2011

Overview: Licensee described a property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order reprimanding the licensee.

Please do not reply to this newsletter. If you wish to contact us please call us on 0800for REAA (0800 367 7322) or 04 471 8930 or email us at info@reaa.govt.nz.

visit: reaa.govt.nz

