



Authority Update



December 2012

New Code of Conduct 2012

The Professional Conduct and Client Care Practice Rules (Code of Conduct) that set the minimum standards for New Zealand's real estate agents are changing.

It's been three years since the current Code of Conduct came into effect and it's time for it to be updated to continue to protect consumers and support a professional real estate industry.

The new Code of Conduct has been developed in consultation with the industry, consumers and the wider public and will come into effect on **8 April 2013**.

They key changes are:

- You must explain to clients when an agency agreement will end. This is a new rule - Rule 10.6(b).
- When an agency agreement with a client is cancelled you must give your former client a list of customers who, if they sell to, may entitle you to a commission. This is a new rule - Rule 9.11.
- You must recommend to all parties that they seek legal advice before signing agency agreements or sale and purchase agreements. This is an amended rule - Rule 9.7.
- Agents who are operating as a business must ensure that all their salespersons are properly supervised and managed. This is a new rule - Rule 8.3.
- You must explain to clients in writing when there is no comparable or semi-comparable sales data to base an appraisal on. This is a new rule - Rule 10.3.
- Before an agency agreement is signed, you must explain to the prospective client that how they chose to sell their property can impact on the benefits you receive. This is a new rule - Rule 10.5.
- There are new rules for buyer's agency agreements on what information must be explained before an agency agreement is signed; only working within the terms agreed with the client; submitting offers; and record keeping obligations. This is a new rule - Rule 11.

There are minor amendments to some other rules as well as some structural changes to the way the Code of Conduct is laid out that you can read about on our [website](#).

Information for agents

As an agent these rules will require some changes to the processes that you and your team use. You should familiarise yourself with the Code of Conduct 2012.

Some things to consider include:

- What training you will need to provide to your staff to ensure that they have a sound knowledge of the new Code of Conduct.
- How you may need to change business processes to accommodate the new cancellation of agency requirements (rule 9.11).
- How the new Code of Conduct impacts on your agency agreements - you may need to amend them to ensure:
 - they reflect the new expectations around double commission warnings (rule 9.10)
 - they include adequate information about required cancellation of agency processes (rule 9.11)
 - they set out when the agency agreement ends (rules 10.6(b), 11.2(b))
 - that where they refer to a rule in the Code of Conduct that it is still the correct reference (rules 6.5, 6.6, 9.6, 9.7, 9.8, 9.13, 9.14, 9.15 & 9.16 from the 2009 Code of Conduct have moved).

In addition, if you are an agent operating as a business you should review your supervision policies. New rule 8.3 means you need to consider how your business ensures that salespersons are supervised and managed.

More information

Go to www.reaa.govt.nz to read more about the changes and what you need to do to comply and to download a copy of the new Code of Conduct - we have also developed a short video about the key changes.

Copies of the new Code of Conduct will be available to purchase from us in early March 2013.

We encourage you to read this information and familiarise yourself with the new Code of Conduct. If you have any questions please [email us](#) or call us on 0800 367 7322 or (04) 471 8930.

We wish everyone a safe and happy Christmas and New Year and look forward to working with you in 2013.



Kevin Lampen-Smith
Chief Executive/Registrar

Also included in this newsletter:

- [Sentencing decisions](#) made in unlicensed trading cases;

- We announce our [industry advisory group members](#);
- [Unsatisfactory conduct decisions by region](#) since 17 November 2009;
- Information on the [2013 continuing education topic](#);
- A [compliance update](#), a [litigation update](#) and [Complaints Assessment Committee decisions](#);
- Information on [licensing statistics](#) as at 30 November 2012.

Sentencing decisions made in unlicensed trading cases

As covered in our November [newsletter](#), Gore man Ewan McLeod was found guilty of unlicensed trading in the Gore District Court. The activities Mr McLeod carried out without a licence included:

- Being paid to assist the vendors with the sale of their property.
- Arranged advertising which advertised him as the contact person.
- Showed interested purchasers through the property.
- Ran an open home.
- Was prepared to negotiate on behalf of vendors and draw up sale and purchase agreements.

A sentencing decision was made on 7 December. The Judge set a starting point for the offending at \$18,000, however after establishing that Mr McLeod was unable to pay this because of his circumstances he was fined \$5,000.

The sentence has also been decided in a successful prosecution against Auckland property trader Vicki Letele. Ms Letele has been fined \$5,000, ordered to forfeit the net finder's fee she received on the transaction and to pay court costs.

These cases demonstrate the Authority is interested in investigating and prosecuting instances of unlicensed trading and that the Courts treat unlicensed trading offences seriously and deliver sentences accordingly.

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Industry advisory groups

We held the first meeting of our four industry advisory groups on 26 November. This was very much an introductory meeting which focused on the roles and objectives of the groups. Topics discussed included the group's involvement in the development of guidance information for the industry and input into the development of continuing education topics.

The advisory group members are:

Residential advisory group:

- | | |
|--------------------|---------------------------------|
| • Anne Duncan | Anne Duncan Real Estate Limited |
| • Antonia Baker | The NZ Property Market Ltd |
| • Colin Wilson | Guardian First National Limited |
| • Garry Malcolm | G V M Limited |
| • Kim Tilly | Barfoot & Thompson Limited |
| • Mike Elford | Edinburgh Realty Ltd |
| • Nicki Cruikshank | Tommy's Real Estate Limited |
| • Scott Mackenzie | Barfoot & Thompson Limited |

Commercial advisory group:

- | | |
|-------------------|---|
| • Alan McMahon | Colliers International Real Estate Management Limited |
| • Bruce Gallie | Colliers International Real Estate Management Limited |
| • David Beecroft | Quadrant Properties Limited |
| • Jonathan Lyttle | Colliers International Real Estate Management Limited |
| • Mark Kirkbride | Barfoot & Thompson Limited |
| • Rohan Hill | Capital Commercial Limited |
| • Tony Doms | Associated Realty Limited |

Rural advisory group:

- | | |
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| • Bill Whalan | Whalan and Partners Limited |
| • David Montgomerie | Patrick & Scott Limited |
| • Jim Ecclestone | PGG Wrightson Real Estate Limited |
| • John Hay | Southern Wide Real Estate Limited |
| • Kim Shannon | Regent Realty Limited |
| • Roger Stark | LJ Hooker Limited |

Business broker advisory group:

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| • Glorianne Campbell | Clyth MacLeod Limited |
| • Gordon McGregor | Resort Brokers Limited |
| • Paul Thomas | Nelson Commercial Realty Limited |
| • Richard Ridler | Link Business Broking Limited |
| • Robbie Naysmith | NAI Harcourts |
| • Steve Smith | Affiliated Business Consultants Limited |

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Unsatisfactory conduct decisions by region

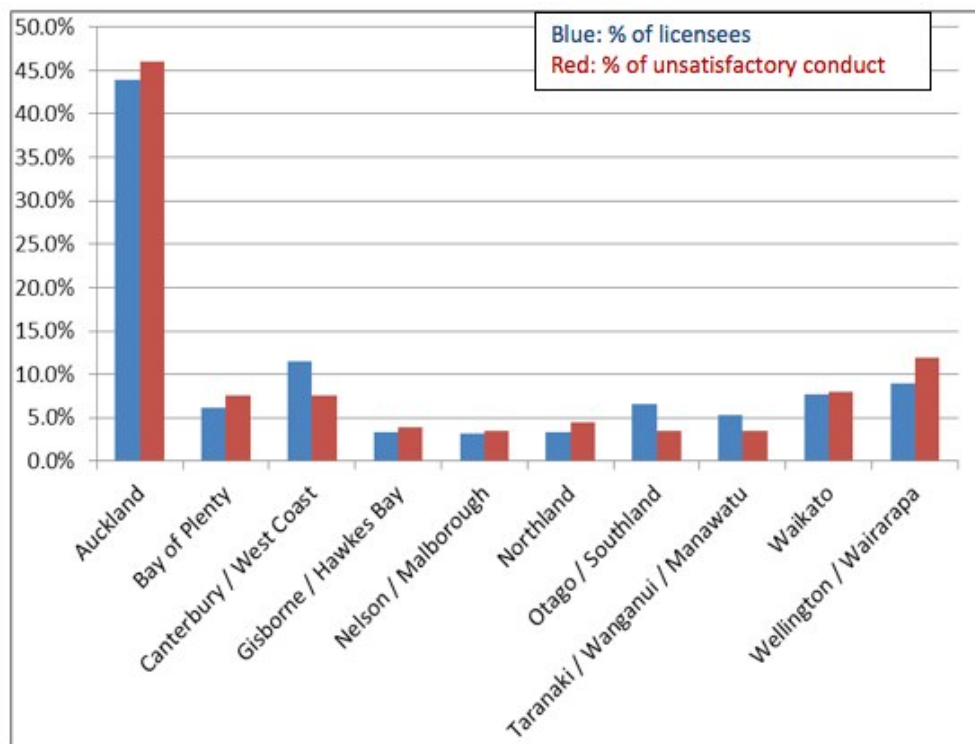
Below are a couple of graphs that show unsatisfactory conduct decisions by region since the Authority was established compared to the number of licensees. The decisions of unsatisfactory conduct range from minor breaches to more serious offenses.

Auckland has the highest proportion of unsatisfactory conduct decisions with 46% of all unsatisfactory conduct decisions being made against licensees from the Auckland area (Graph 1) - however this is to be expected given that almost half of New Zealand's licensees are in Auckland.

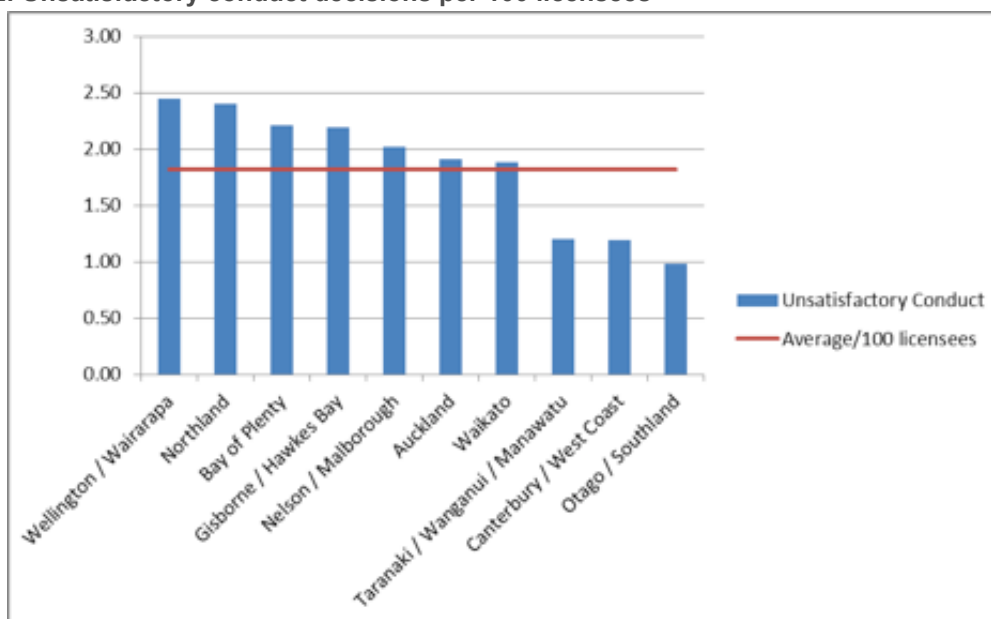
Graph 2 looks at the number of unsatisfactory conduct decisions per 100 licensees across the different regions. Wellington/Wairarapa, closely followed by Northland, has the highest number of unsatisfactory conduct decisions (almost 2.5) per 100 licensees. Otago/Southland however has only one decision of unsatisfactory conduct per 100 licensees.

Even at the highest level there have only been approximately 2.5 decisions of unsatisfactory conduct per 100 licensees in the last three years since the Authority was established in November 2009.

Graph 1: Unsatisfactory conduct decisions compared to total number of licensees



Graph 2: Unsatisfactory conduct decisions per 100 licensees



Note that these graphs are based on unsatisfactory conduct decisions made since the Authority started on 17 November 2009 and the number of licensees in each region as at 31 October 2012.

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Continuing education topic 2013

Just a reminder that the continuing education topic for 2013 is "the legal and physical description and representation of real estate".

Continuing education topics are set at the same level as the entry level qualifications i.e. the National Certificate in Real Estate (Salesperson) Levels 3-5.

Approximately 95% of licensees have completed their 2012 continuing education requirements. If you are still to complete your 2012 continuing education you will need to enrol with an online provider and complete this by 31 December 2012. A list of providers is on our [website](#).

If you do not complete the 2012 continuing education requirements by the end of the year you run the risk of having your licence cancelled.

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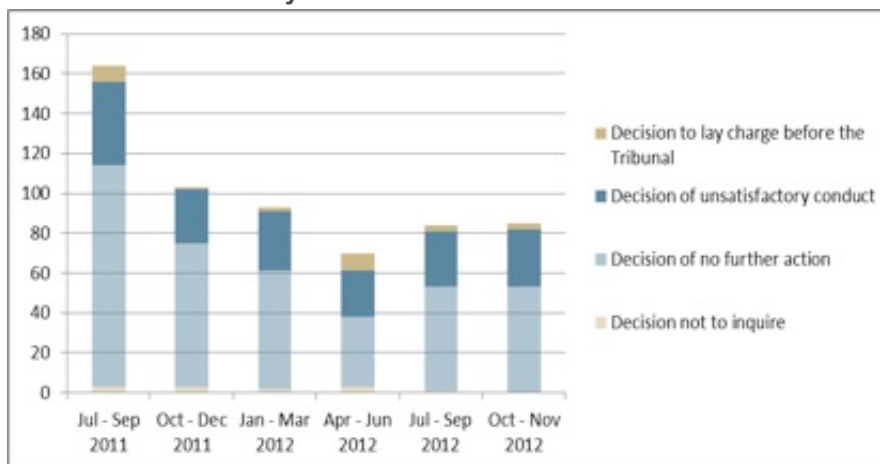
Compliance update

Since July 2011, approximately 40% of complaints received are dealt with through consumer information, compliance advice and mediation, the other 60% are referred to a Complaints Assessment Committee (CAC). This "triage" approach, where we decide on the most appropriate response to a complaint, provides a more effective and efficient outcome for complainants and licensees.

Graph 3 shows that there has been a slight increase in the proportion of CAC decisions of unsatisfactory conduct since the triage approach began on 1 July 2011. This is due to the triage approach which promotes resolution of less serious complaints without being referred to a CAC.

On average, since 1 July 2011, 62% of CAC decisions are 'no further action', 31% 'unsatisfactory conduct', 2% 'not to inquire' and 5% have resulted in a decision to lay charges with the Real Estate Agents Disciplinary Tribunal.

Graph 3: CAC decisions since 1 July 2011



Note that the volumes for October and November 2012 are based on two months compared with the other periods that are three months.

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Complaints Assessment Committee decisions

Four decisions of unsatisfactory conduct have been published since our last newsletter on 21 November 2012.

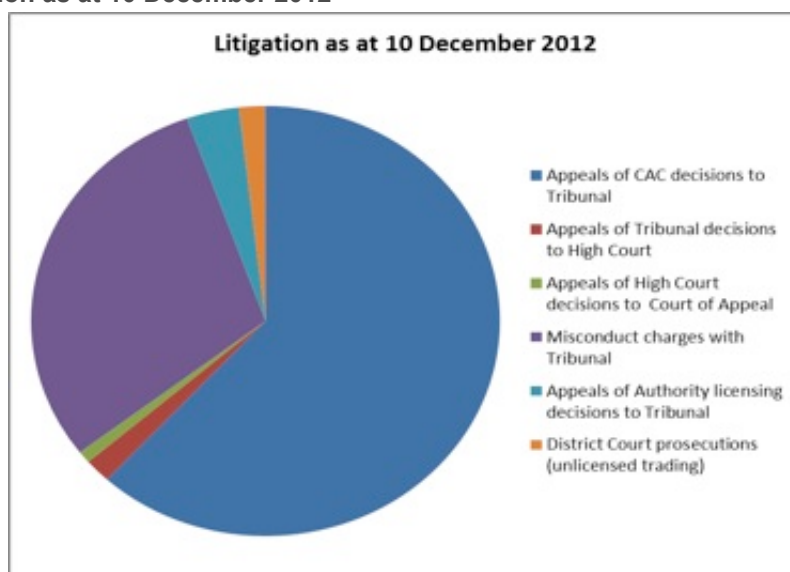
Table 1: Decision categories

Topic	Number	Relevant Cases
• Did not use reasonable care and skill when making representations about a property and did not adequately advise the complainant about the Council documentation they should get.	1	CA5386674
• Did not disclose that he was the purchaser and concealed a GST issue when preparing the sale and purchase agreement.	1	CA5188998
• Did not provide a copy of the Sale and Purchase Agreement Approved Guide.	1	CB6205565
• Did not get a signed agency agreement, did not confirm with the Council the existence of a mooring permit and advertised the property as having a mooring permit when it did not.	1	CB5765888

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Litigation update

Graph 4 below shows our litigation work as at 10 December 2012. The majority of this work is appeals made against Complaints Assessment Committee (CAC) decisions followed by misconduct charges we have laid with the Tribunal.

Graph 4: Litigation as at 10 December 2012

Some interesting stats for 2012:

- 55% of appeals against CAC decisions are dismissed.
- 79% of misconduct charges we lay with the Tribunal are successful and result in a decision of misconduct against the licensee.
- We had two successful unlicensed trading prosecutions in 2012 (and one in 2011).
- Significantly fewer appeals against CAC decisions have been made in 2012 than in 2011.
- We filed more charges of misconduct in 2012 than 2011.

You can view the graphs on which these stats are based on our [website](#).

No new decisions of misconduct from the Tribunal have been published since our last newsletter on 21 November 2012.

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Licensing update

At the end of November there were 13,374 active licences. This is an increase of 533 licences since 1 April 2012 and is due to the increased number of new licence applications we have received this year.

Table 2: Licence numbers 30 November 2012

	Active	Suspended	Total
Individual	12,558	3,251	15,809
Agent	1,931	302	2,233
Branch manager	474	83	557
Salesperson	10,153	2,866	13,019
Company	816	101	917
Total	13,374	3,352	16,726

[Licence numbers by region](#)

Since July 2012 we have been approving an average of 33 new licence applications a week. The highest number was 47 in the week beginning 23 October. The average age of new licence applicants is 43. The youngest applicant was 18 and the oldest 77.

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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 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.

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

