

Authority Update



February 2012

CEO/Registrar

In this newsletter...

- Kevin Lampen-Smith will be starting as our new Chief Executive/Registrar on 27 February 2012.
- We provide some compliance guidance on checking titles and agent's disclosure obligations when signing agency agreements.
- Renewals are now underway for the majority of real estate licensees whose licences expire on 31 March 2012. Please ensure that you apply to renew your licence before 31 March 2012.
- The verifiable component of continuing education will be available from the approved providers from the end of March/early April 2012. A list of the approved providers is available on our [website](#).
- We provide an update on the review of the Code of Conduct.
- No Tribunal decisions of misconduct have been published since our last newsletter.
- 7 decisions of unsatisfactory conduct have been published since our last newsletter ranging from saying that a property was still on the market when it had already been sold to not disclosing potential water tightness issues.

New Chief Executive for the Authority



We are pleased to announce that Kevin Lampen-Smith will be taking up the position as our new Chief Executive/Registrar on 27 February 2012.

Kevin has extensive experience with regulatory bodies and most recently was the General Manager, Corporate Services at the Electricity Authority where he played a significant role in the successful transition from the Electricity Commission to the newly-formed market regulator, the Electricity Authority.

Kevin is a chartered accountant with experience in senior leadership roles in New Zealand and overseas, including roles in Africa and Asia.

We are looking forward to welcoming Kevin on board.

Compliance Guidance Information

Checking of Titles

The Real Estate Agents Disciplinary Tribunal (the Tribunal) considers it a fundamental part of a licensee's duty to check the title of any property that they are selling (or to get a competent person to check the title). This duty also extends to the checking of other council requirements such as zoning, town planning regulations etc.

The Tribunal has indicated that you will have limited defences if you fail to fulfill this responsibility and for any consequences (such as misrepresentation) that may arise from failing to do these checks.

The Tribunal considers it the responsibility of office managers, supervising agents and branch managers to ensure that this obligation is fulfilled.

Refer to appeal decision [\(2011\) NZREADT 39](#) (scroll through the decisions until you find (2011) NZREADT 39).

Agents' disclosure obligations when signing agency agreements.

In a recent appeal decision, the Tribunal has noted that the obligations of an agent in relation to the signing of an agency agreement contained in both the Act and the code are not merely technical, but are important substantive provisions to promote and protect consumers.

It would be prudent for agents to ensure that they go through the agency agreement with their client and point out important parts of the agreement as simply offering to go through it will not always be sufficient to satisfy the agent's obligations.

Refer to appeal decision [\(2011\) NZREADT 38](#) (scroll through the decisions until you find (2011) NZREADT 38).

Renewals

Renewals are now underway for the majority of real estate licensees whose licences expire on 31 March 2012.

If your licence expires at the end of March, we sent you an email renewal reminder on 1 February that contains a link to download the renewal application form. You will also receive a second reminder via letter shortly (if you have not received this already). The letter reminder also includes some FAQs about continuing education.

If you have not received any of these reminders by 20 February 2012 please download the renewal form from the [Licensing](#) section of our website.

If your licence expires on a date other than 31 March 2012, you will be sent a renewal reminder 4-6 weeks before the expiry date.

Please keep us up to date with any changes in your contact information so that we are able to send these reminders to you.

It is important that we receive your renewal application by the expiry date shown on your evidence of licence. If we don't, your licence will expire and you will no longer be able to carry out real estate agency work.

Continuing Education

The continuing education practice rule is now in place. Licensees need to complete 20 hours of continuing education in 2012 (10 hours of verifiable continuing education and 10 hours of non-verifiable continuing education).

In 2013, you will have to demonstrate that you have completed this continuing education in 2012 in order to renew your licence.

Verifiable continuing education

We anticipate that approved providers will start running courses from late March or early April 2012. This will give you 9 months to complete your 10 hours of verifiable continuing education.

A list of the approved providers for verifiable continuing education is available on our [website](#). You can choose to use any of these providers.

Non-verifiable continuing education

You can start to do your 10 hours of non-verifiable education as soon as you want to. Remember to keep written records of what activities e.g. conferences, in-house training, training courses etc. you do to complete your non-verifiable continuing education.

Our [website](#) has everything you need to know about continuing education including a short downloadable guide.

Code of Conduct Review

We are currently reviewing the Professional Conduct and Client Care practice rules. After two years, it is now timely to review these rules to ensure that they continue to be current and relevant to all parts of the real estate industry.

The consultation period closed on 1 February 2012 and we received 26 submissions, mostly from agencies and individual licensees.

At this early stage submissions appear to be focused on practical amendments and suggestions for how the Code of Conduct can better accommodate business practice outside of the residential market while retaining its consumer protections.

We expect to have a new Code in place by June 2012, once it has been approved by the Minister.

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 - Sept-11	Oct-11	Nov-11	Dec-11	Jan-12	TOTAL
Concerns Received:	225	68	63	44	28	428

Intervention*:						
• No Action:	2	0	0	0	0	2
• Consumer Information:	45	17	7	6	3	78
• Compliance Advice:	24	10	8	8	4	54
• Alternative Dispute Resolution (ADR):	18	5	1	0	0	24
• Investigation**:	133	43	36	24	14	250
• Withdrawn:	0	0	0	0	0	0
Interventions Currently Underway						
• ADR:						2
• Enforcement:						182
CAC Decisions:						
• Not to Inquire:	0	1	0	0	0	1
• No Further Action:	0	3	4	5	4	16
• Unsatisfactory Conduct:	2	1	0	3	2	8
• Charges Laid before the Disciplinary Tribunal (by a CAC):	0	0	0	0	0	0
Appeals:	0	1	0	1	1	3
Withdrawn Appeals:	0	0	0	0	1	1

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

** 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 - Sept-11	Oct-11	Nov-11	Dec-11	Jan-12	TOTAL
Complaints/Allegations Under Investigation:						56
Withdrawn Complaints:	2	0	0	0	0	2
CAC Decisions Not to Inquire:	7	1	0	0	0	8
CAC Decisions Made:						
• Unsatisfactory Conduct:	44	9	5	6	1	65
• No Further Action:	108	20	19	5	2	154
• Charges laid before the Disciplinary Tribunal (by a CAC):	4	0	1	0	0	5

Total Completed*:	165	30	25	11	3	234
Appeals:	43	7	2	14	1	67
Withdrawn Appeals:	1	0	1	0	1	3

**Includes allegations which may not receive CAC decisions.*

Licensing Update

Number of:	TOTAL (as at 31 January 2012)
Active Licences:	13980
• Company:	845
• Agent:	2047
• Branch Manager:	527
• Salesperson:	10561
Suspended Licences:	3249
• Company:	86
• Agent:	225
• Branch Manager:	79
• Salesperson:	2859

The table below shows the number of active and suspended licences, by region, as at 31 January 2012.

Class of Licence:	Active	Suspended
Individual:	13135	3163
• Auckland	5680	1171
• Bay of Plenty	816	238
• Canterbury / West Coast	1521	511
• Gisborne / Hawkes Bay	438	94
• Nelson/Marlborough	435	106
• Northland	469	119
• Otago / Southland	863	196
• Taranaki / Wanganui / Manawatu	710	177
• Waikato	1024	271
• Wellington / Wairarapa	1152	214
• Not specified	27	66

Companies:	845	86
• Auckland	316	23
• Bay of Plenty:	55	7
• Canterbury / West Coast	116	20
• Gisborne / Hawkes Bay	26	2
• Nelson/Marlborough	34	2
• Northland	43	2
• Otago / Southland	66	8
• Taranaki / Wanganui / Manawatu	48	5
• Waikato	75	10
• Wellington / Wairarapa	65	6
• Not specified	1	1
Total:	13980	3249

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 6 December 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,

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

independent and effective.

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

Complaint Number: CB5545658

Decision made: 16 December 2011

Overview: Licensee did not ensure that a covenant was included in all of the sale and purchase agreements and breached rule 9.16 of the Code of Professional Conduct and Client Care as he provided incorrect information in a printed advertisement and advertised the property on different terms to those authorised by the vendors.

Decision/Penalty: Order censuring the licensee.

Complaint Number: CA4105182

Decision made: 14 November 2011

Overview: Licensee breached rules 6.4 and 9.2 of the Code of Professional Conduct and Client Care by not engaging with the complainant (and therefore not acting in the best interest of the vendor), and rule 9.13 as the licensee did not present the complainant's offer to the vendor.

Decision/Penalty: Orders censuring the licensee, ordering them to pay a fine of \$1,000 to the Real Estate Agents Authority and complete unit standard 23141: Legal matters affecting real estate licensees.

Complaint Number: CA4100592

Decision made: 21 November 2011

Overview: Licensee released the purchased property's keys to the purchaser prior to settlement.

Decision/Penalty: Order reprimanding the licensee.

Complaint Number: CA4137699

Decision made: 21 November 2011

Overview: Licensee contravened rule 6.5 of the Code of Professional Conduct and Client Care as she failed to give clear and unambiguous disclosure of potential water tightness issues when she was aware, or should have been aware, of those potential issues.

Decision/Penalty: Order reprimanding the licensee.

Complaint Number: CA4121004

Decision made: 14 November 2011

Overview: Licensee breached rule 6.4 of the Code of Professional

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.

Conduct and Client Care as they misled the complainant by telling her and her solicitor that the property was still on the market when in fact it had already been sold.

Decision/Penalty: Orders censuring the licensee, ordering them to reimburse the complainant \$500, pay a fine of \$7,500 to the Real Estate Agents Authority and complete unit standard 26149: Demonstrate knowledge of licensing and code of professional conduct under the Real Estate Agents Act 2008.

Complaint Number: CA5240181

Decision made: 4 November 2011

Overview: Licensee breached rule 9.5 of the Code of Professional Conduct and Client Care as he did not provide a written appraisal.

Decision/Penalty: No further penalty apart from the unsatisfactory conduct decision itself.

Complaint Number: CA4112373

Decision made: 11 August 2011

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

Decision/Penalty: Orders reprimanding the licensee and ordering them to pay a fine of \$1000 to the Real Estate Agents Authority.

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

