



# Authority Update



July 2011

## CEO/Registrar

We are now taking a new approach to how we handle enquiries and complaints.

Prior to 1 July 2011, the majority of concerns raised about licensees were treated as formal complaints, meaning that they had to be heard by a Complaints Assessment Committee (section 74(2) of the Real Estate Agents Act 2008).

Under our new approach, concerns will be assessed to determine the most appropriate response. The response will be one of the following.

- **Information:** The concern does not relate to real estate agency work and is not unsatisfactory conduct or misconduct. The person will be provided with appropriate information e.g. the appropriate agency to deal with their concern.
- **Compliance advice:** If little or no detriment resulted from the licensee's behaviour, the behaviour is not on-going, the licensee has not had any previous compliance problems and there are no other wider public interest issues as a result of the behaviour, we will generally send the licensee a compliance advice letter.
- **Alternative Dispute Resolution (ADR):** If the concern is only between the licensee and the complainant, doesn't involve issues of wider public interest and is capable of being resolved between the licensee and the complainant, we will suggest ADR as the best way to resolve the concern.
- **Enforcement:** If it is a serious concern and does not fit into one of the above categories it will be heard and dealt with by a Complaints Assessment Committee as a formal complaint. Generally these are concerns where there was an intention to breach the law or the relevant Rules and Regulations, the licensee has previously engaged in similar behaviour or there is a wider public interest in the behaviour being fully investigated and considered.

Each concern will be assigned a case manager who owns the concern through to resolution.

This approach means that concerns will be responded to in a way that is appropriate to their seriousness and complainants and licensees will have timely and satisfactory resolution of concerns.

More information can be found on our [website](#).

## Updated Website

We have updated our website with information on our new compliance approach. When you visit the website you will notice that one of the changes we have made is that the "[Licensees](#)" section (which contains information for people working in the real estate industry) has been reorganized.

All the same information is there, we have just tried to make it a bit easier to find and have grouped the information to do with licensing into the "[Licensing Information](#)" section, the information to do with complying with the Act, Regulations and Rules into the "[Compliance Information](#)" section and information about what happens when a concern is raised about a licensee's behaviour into the "[Concerns about a Licensee's Behaviour](#)" section.

Other changes include the renaming, reorganization and updating of the "[Buyers and Sellers](#)" section (which used to be called "Consumers"), and the replacement of the "Complaints and Discipline" section with the "[Complaint Decisions](#)" section where Complaints Assessment Committee decisions are published.

## New Notification of Concern Form

The old complaint form has been replaced with a new Notification of Concern Form which is available from our [website](#).

Please replace any copies (printed or electronic) of the old complaint form you may have with the new Notification of Concern Form. This new form must be used from 1 July.

## Authority Structure

We have also made some changes to our structure to support our new approach. Our senior management team is made up of:

•	CEO/Registrar	Keith Manch
•	Legal Counsel	Martin Sawyers
•	Operations Manager	Dean Winter
•	Manager, Licensing	Margaret Steel
•	Manager, Compliance Case Management	Leigh Jones
•	Manager, Investigations	Peter Nicholls

The full Authority structure is available on our [website](#).

## Updated Approved Guides

New versions of the two approved guides are now available (version 1.1, July 1 2011). As well as updating the guides to reflect our new compliance approach we have also incorporated improvement suggestions from both the industry and buyers and sellers.

The updated guides are available on our [website](#) and anyone ordering the guides from July 1 will receive the updated guides.

If you have saved electronic versions of the guides please replace these with the updated versions.

The updated guides are currently being translated into Maori, Samoan, Tongan, Hindi, Chinese and

Korean. These will be available from our website in late July.

### Continuing Education Consultation

We are currently seeking submissions on the proposed continuing education framework that will come into effect on 1 January 2012.

The framework proposes that all licensees complete a set number of hours of education over a one year period. It recognises industry-based education licensees already undertake, but also sets new targets and asks them to do specific education that reinforces their knowledge about complying with the Act, Regulations and Rules.

Over the past 12 months we have talked with licensees, REINZ, the REAL ITO and the Ministry of Justice about the framework and have developed a modern, flexible and responsive approach that recognises proactive compliance and builds on new entry standards that came into effect in 2010.

The consultation period runs until 16 July 2011. The discussion document which outlines the proposed model in detail and information on how to make a submission can be found on our [website](#).

All submissions will be considered and we will seek Ministerial approval for the new framework in August 2011. The report prepared for the Associate Minister of Justice will be released publicly on our website. A notice will appear in the New Zealand Gazette by late November 2011 and the new rule will apply from 1 January 2012. Continuing education will then need to be completed from 2012 onwards.

### Real Estate Agents Disciplinary Tribunal Findings of Misconduct

Below is an overview of the latest decisions of misconduct that have been published by the Real Estate Agents Disciplinary Tribunal (the Tribunal):

- Decision Number:** [2011] NZREADT 9  
**Reference Number:** READT 080/10  
**Decision Date:** 27 May 2011  
**Overview:** Defendant advertised eight apartments for sale without the authorisation of the owner of the apartments.  
**Penalty:** Order that the defendant's licence be suspended for six months (effective one month from the 27 May 2011).

You can view the decision document on the Tribunal's [website](#). You will need to scroll through the decisions until you find decision number [2011] NZREADT 9.

**Keith Manch**

**Chief Executive/Registrar**

## Complaints Update

As our new approach was introduced on 1 July, this is the last time that we will be reporting on complaints numbers in this way. Future reporting will report on concerns and our response to those concerns.

Number of:	July - October	November 2010 -	March 2011	April 2011	May 2011	June 2011	TOTAL

	2010	February 2011					
Complaints/allegations:	246	237	54	50	53	60	700
Complaints / allegations under investigation:							299
Withdrawn complaints:	20	10	2	2	4	1	39
CAC decisions not to inquire:	43	33	7	5	17	6	111
CAC determinations made:	175	179	33	36	47	40	510
Unsatisfactory conduct:	25	36	4	9	12	16	102
No further action:	149	126	22	26	34	24	381
Charges laid before the Disciplinary Tribunal (by a CAC):	1	17	7	1	1	0	27
Completed complaints:	218	212	40	41	68	56	635
Closed allegations:	22	26	0	0	33	14	95
Appeals:	22	35	2	6	4	11	80
Withdrawn appeals:	6	1	0	2	3	5	17

\* Closed complaints no longer include withdrawn complaints.

## Licensing Update

Number of:	TOTAL (as at 30 June 2011)
Active licences:	13,809
• Company	819
• Agent	2,041
• Branch Manager	526
• Salesperson	10,423
Suspended licences:	3,337
• Company	84
• Agent	224
• Branch Manager	94
• Salesperson	2,935
Not renewed:	1,675

## Unsatisfactory Conduct Determinations



Below is an overview of the latest unsatisfactory conduct determinations. 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: CA3976464

**Determination made:** 1 June 2011

**Overview:** The licensee's property management agreement breached the Act by purporting to effect an appointment of an agent without an agency agreement being signed and by attempting to do so without providing the Agency Agreement Approved Guide.

**Determination:** Finding of unsatisfactory conduct under section [72](#) of the Real Estate Agents Act 2008. Orders that the licensee pays a fine of \$2,200 to the Real Estate Agents Authority and reimburse the complainant's legal costs of \$4,198 (incl. GST).

#### Complaint Number: CA3675279

**Determination made:** 9 May 2011

**Overview:** Licensee falsely claimed to have introduced the purchaser to the property sold by the complainant.

**Determination:** Finding of unsatisfactory conduct under section [72](#) of the Real Estate Agents Act 2008. Orders reprimanding the licensee and ordering the licensee to apologise to the complainant and the purchasers of the property.

#### Complaint Number: CA3843948

**Determination made:** 17 March 2011

**Overview:** Licensee breached rules 9.1 and 9.5 of the Code of Professional Conduct and Client Care as he (1) did not follow his client's instructions to cancel the listing and therefore did not act in the best interest of his client and (2) did not provide an appraisal for the property as required.

**Determination:** Finding of unsatisfactory conduct under section [72](#) of the Real Estate Agents Act 2008. Order censuring the licensee.

## 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: CA3016776****Determination made:** 8 February 2011

**Overview:** Licensee failed to contact the sole agent of a property and did not adhere to the explicit rules in the Code of Professional Conduct and Client Care in that he did not (1) provide an appraisal of the property and (2) have a signed agency agreement in place when he drew up the Sale and Purchase Agreement.

**Determination:** Finding of unsatisfactory conduct under section [72](#) of the Real Estate Agents Act 2008. Order that the licensee pay a fine of \$2,000 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.

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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](mailto:info@reaa.govt.nz).

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

