



Authority Update



June 2012

CEO/Registrar

Welcome to the June newsletter. One of the main activities we have underway at the moment is the review of the Code of Conduct. We are undertaking a second round of consultation and are seeking feedback on the draft revised code and would welcome your thoughts - full details are below.

I would also like to say thank you to the Professionals, Hutt City who played host to two of our case managers, Danielle and Caitlin, recently. Danielle and Caitlin attended the staff meeting, went on a caravan to four newly listed properties, observed four auctions and had a chance to talk with the licensee agent. With the help of REINZ we are planning a series of agency visits which aim to give our front-line staff a first hand-view of how the practice of real estate is carried out and to broaden the experience and skills of our team.

Also included in this newsletter is:

- An update on the [Code of Conduct Review](#) and details on how to make a submission on the draft revised Code;
- The Authority is targeting licensees who are involved in [unlicensed trading activities](#);
- The benefits of [using mediation to resolve a concern](#);
- [Compliance guidance information](#) on the Tribunal's view of creating false competition for a property;
- A reminder about your [continuing education obligations](#);
- Notification that [plastic licenses](#) will no longer be available from 1 July 2012;
- A general [compliance update](#) including recent decisions from the [Tribunal](#) and the [Complaints Assessment Committees](#); and
- Information on [licensing statistics](#) as at 31 May 2012.

Code of Conduct review - second consultation

We are undertaking a second round of consultation on proposed changes to the Code of Conduct.

At the end of 2011 we put out a consultation document seeking your views on a number of questions and possible changes to the Code of Conduct. Based on the submissions received, we are now seeking final input from industry and other interested parties on the draft Code of Conduct. This draft contains proposals such as requiring licensees to recommend that a prospective client or customer obtain legal

advice before signing contracts, better disclosure of individual financial rewards by listing agents and specific rules for buyers' agents.

Information on how to make a submission is available on our [website](#). Submissions close on 27 July 2012.

Once we have considered submissions a final draft Code of Conduct will be provided to the Authority Board for review and subsequently to the Associate Minister of Justice for approval.

Once the Code of Conduct has been approved, you will be provided with information on the changes and will be given plenty of time to become familiar with the changes before they come into effect. The date that the new Code of Conduct comes into effect is still to be decided. The view at this stage is that there will be a three month gap between Ministerial approval of the Code of Conduct and the implementation date.

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Real estate agents and unlicensed real estate activity

We are concerned at the apparent link between some licensees and unlicensed real estate activity.

We have been investigating a wide range of unlicensed real estate activity. A reasonably common version of this activity involves businesses that purchase properties and then on sell them before settlement. Having identified a property they will put in an offer conditional on a reasonably long period of due diligence. During the period of due diligence they market the property seeking a quick on-sell at a profit-anywhere between \$10,000 and \$40,000. Usually settlement of the on-sale occurs contemporaneously with the initial settlement. If they cannot on-sell the property then they do not declare the agreement as unconditional.

The Authority is of the view that such activity is unlicensed real estate work and intends to investigate and prosecute those persons involved in this activity. We are also concerned at the role some licensed agents may play in facilitating this activity.

It seems that often the businesses carrying out this activity have close associations with real estate licensees. The licensees, aware that there is the potential for a quick sale, will notify the business of the property and facilitate the initial sale subject to due diligence. Thus, for every little effort, the licensee has secured their commission.

The difficulty that the Authority sees with such an arrangement is that the licensee facilitating such a transaction is not acting in the best interests of their client and is not fulfilling their fiduciary obligations to them. They have facilitated a quick sale fully aware that the purchaser is going to seek to on-sell that property at a profit. They have not sought the best price for their client and the purchaser has the benefit of a long due diligence period with little or no risk of having to complete the purchase unless they obtain an on-sale at a profit.

Over the next 12 months we intend to target this type of activity with an emphasis on targeting the licensees involved in these schemes for disciplinary action. If you are aware of such activities, we encourage you to draw them to our attention so that they can be investigated.

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Using mediation to resolve a complaint.

One of the ways a complaint about a licensee's behaviour can be resolved is mediation. Mediation is a free service that resolves disputes quickly and effectively.

Mediation is the best way to resolve a concern 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.

The aim of mediation is to identify the issues, develop options, and consider all the alternatives to a dispute, and to reach an agreement that all of the parties can agree to. This is done with the help of an independent mediator, who listens to all sides of an argument and then guides the process.

Both the complainant and the licensee have to agree to mediation. The Authority arranges the mediation and there is no cost to either party.

There are a number of benefits to agreeing to mediation. It is quick, effective, confidential and you retain control over the outcome as you can reach more creative settlements that all parties can live with and you don't have to agree to a settlement unless you want to.

The Authority uses Dispute Resolution Services Limited (DRSL) to provide mediation services. More information can be found at the DRSL [website](#).

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Compliance Guidance Information - False Competition

The Tribunal has *noted** that the practice of licensees obtaining offers from prospective purchasers, where it is almost certain that the conditions of the offer will not be met, in order to drum up other offers and create false competition for properties is at the least improper and at the worst amounts to a type of fraud.

**Michael Harvey v The Real Estate Agents Authority (CAC10063)
and Patricia Kelsall ((2012) NZREADT 21)*

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Continuing Education

Please remember if your licence is active during 2012 you need to complete the 10+10 continuing education requirements regardless of when your licence expires. This applies to all licensees unless you qualify for an exemption because you have completed a prescribed qualification in 2011 or will complete the qualification in 2012.

If you are currently enrolled in a prescribed qualification but will not complete this by the end of 2012 you are required to do the 10 hours verifiable continuing education.

Course providers will be notifying us of the details of licensees who have enrolled or completed the verifiable component as at 30 June 2012. If you have not enrolled with an approved course provider to complete the verifiable continuing education you will be sent a reminder.

[More information on continuing education.](#)

[Back to Top](#)**Plastic Licences**

From 1 July 2012 plastic licenses will no longer be available due to the AA no longer being able to provide this service.

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Kevin Lampen-Smith
Chief Executive/Registrar

Compliance Update

The following tables set out recent compliance activity. In time we will be able to report on compliance trends. However, as our new compliance approach was only implemented on 1 July 2011 it is still too early to do this.

Table 1: Responses to concerns received since 1 July 2011

	Jul-Sep 2011	Oct-Dec 2011	Jan-Mar 2012	April-May 2012
Consumer information	46	29	13	10
Compliance advice	27	26	21	9
Alternate dispute resolution	18	7	6	2
CAC investigation into complaint	136	116	93	59
Total	227	178	133	80
Open concerns				208

This table shows that over the last three quarters, there has been a slight increase in the percentage of concerns that have required investigation by a Complaints Assessment Committee (CAC) - 60%, 65% and 70% respectively. However, CAC's are having to review fewer cases due to a decrease in the number of concerns received.

Table 2: CAC decisions since 1 July 2011

	Jul-Sep 2011	Oct-Dec 2011	Jan-Mar 2012	April-May 2012
Decision not to inquire	3	3	2	3
Decision of no further action	111	72	59	17

Decision of unsatisfactory conduct	42	27	30	11
Decision to lay charge before the Tribunal	8	1	2	4
Total	164	103	93	35
Decisions appealed	41	25	12	7

The above table shows the total number of decisions that have been made by CACs since 1 July 2011. The data includes decisions that relate to complaints that were received both pre and post 1 July 2011, when the new triage process was introduced.

The percentage of unsatisfactory conduct decisions has increased slightly since the July-September 2011 quarter - 26%, 26% and 32% respectively. This is to be expected as post 1 July only the more serious concerns are referred to a CAC. Concerns that are less serious in nature are resolved via other interventions such as compliance advice or consumer information.

It is also worth noting the emerging trend that fewer CAC decisions are being appealed (the above numbers reflect appeals within a quarter that may or may not relate to CAC decisions from the same quarter).

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Real Estate Agents Disciplinary Tribunal Decisions

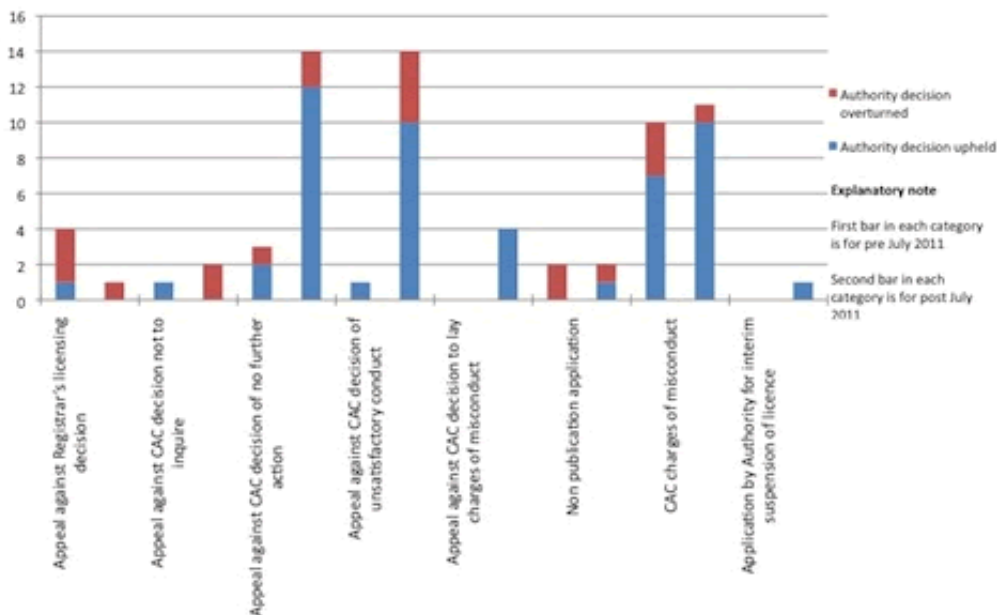
Graph 1 below summarises all Real Estate Agents Disciplinary Tribunal (Tribunal) decisions made from when the Tribunal first sat in November 2010 through to 14 June 2012.

In total, 71 cases have been decided. There are a further 32 cases that are before the Tribunal awaiting their consideration.

We have reviewed the nature and comparability of the penalty decisions made by the Tribunal to provide guidance to Complaints Assessment Committees for their decisions. A copy of this information is available [here](#) (PDF 215.25kb).

Graph 1: Tribunal decisions November 2010 to 14 June 2012

Tribunal Decisions - Pre and Post July 2011



Since our last newsletter on 10 May 2012, two new decisions of misconduct have been published. One relates to behaving in a verbally and physically threatening manner ([\(2012\) NZREADT 20](#)) and the other relates to behaving aggressively and abusively towards a stranger ([\(2011\) NZREADT 19](#)).

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Unsatisfactory Conduct Decisions

17 decisions of unsatisfactory conduct have been published since our last newsletter on 10 May (Table 3). The most common reason for a decision of unsatisfactory conduct was that the licensee did not have a listing authority.

Table 3: Decision categories

Topic	Number	Relevant Cases
• Supervision		CB5645567 CB5646062 CB5768804/CB5768831 CA5291967
• No listing authority		CB5645567 CA3795195 CB5646062 CB5768804/CB5768831 CA5291967 CA4934379
• Misrepresentation/misleading		CB5811176/CB5861882 CB5707649 CA4103355 CA5330847

• No market appraisal	CA3861426/CA3862866
• Failed to do a title search	CB5488094
• No or little understanding of the Act	CA5291967
• Advertising/marketing	CB5609603/CB5609693 CB5548592
• Incompetency/negligence	CA3876105 CA4934379 CB5699117 CB5550527

Note: A decision may fall into more than one category.

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Licensing Update

There are currently 12,857 active licences (Table 4) which is an increase of 16 licences since 30 April 2012.

Table 4: Licence numbers 31 May 2012

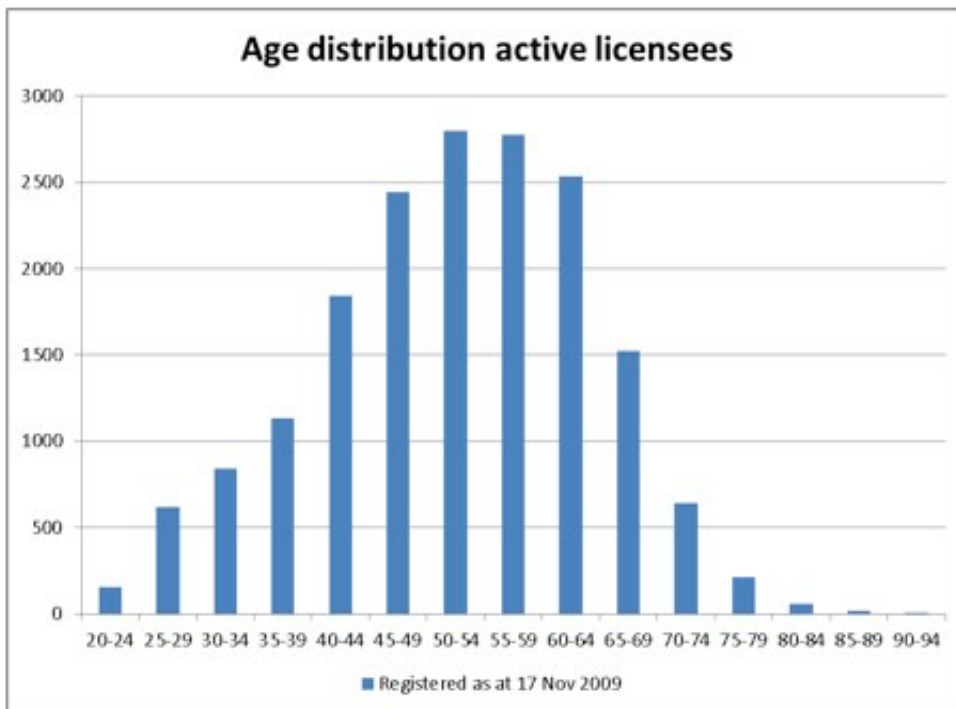
	Active	Suspended	Total
Individual	12,046	3,494	15,540
Agent	1,927	309	2,236
Branch manager	473	90	563
Salesperson	9,646	3,095	12,741
Company	811	103	914
Total	12,857	3,597	16,454

[Click here](#) to see licence numbers by region.

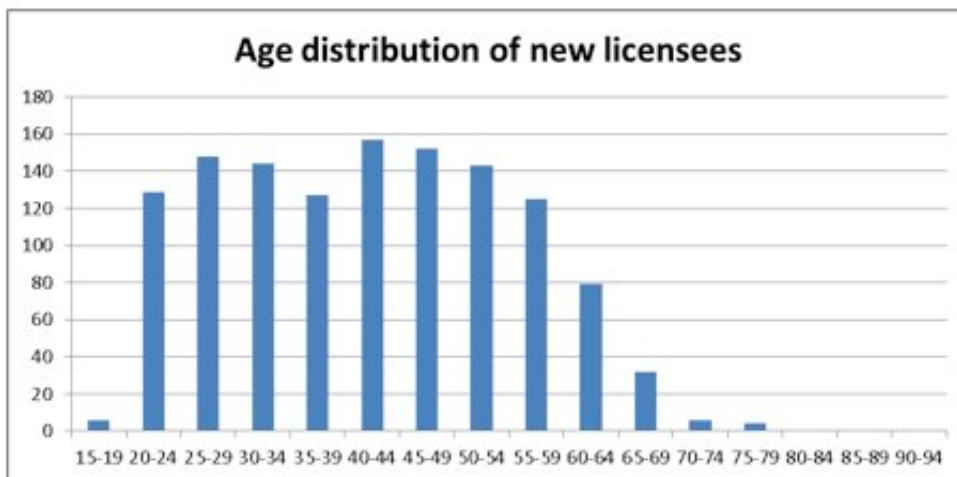
Age distribution

The following graphs show the age distribution of licensees. Graph 2 shows the age distribution of licensees who were in the industry as at 17 November 2009 and still have active licences. Graph 3 shows the age distribution of people issued new licences in 2011 and 2012. The average age of all licence holders is 50 but the average age of new licensees is 42. The age range of new licensees is similar to the deemed licence however the distribution show more new licensees in the younger age brackets.

Graph 2: Age distribution of active licensees



Graph 3: Age distribution of licensees first registered in 2011 or 2012



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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 0800 for REAA (0800 367 7322) or 04 471 8930 or email us at info@reaa.govt.nz.

visit: reaa.govt.nz

