



# Authority Update



March 2013

Welcome to our March newsletter. It is a busy time of year for us with the majority of licensees having to renew their licence by 31 March.

31 March is Easter Sunday so you need to make sure that your renewal application reaches us by Thursday 28 March. If you are posting your renewal application, we suggest that you post it no later than 22 March as it can take up to a week to reach us. If you are faxing or emailing your application, it needs to be sent by 5pm on 28 March.

Renewal applications forms can be downloaded from our [website](#).

Please do not wait until the last minute to send in your renewal application. If you do it will take longer for us to process - up to 2-3 weeks.



**Kevin Lampen-Smith**  
Chief Executive/Registrar

Also included in this newsletter:

- The new [Code of Conduct 2012](#) comes into effect on 8 April 2013;
- [Tribunal guidance](#) on finding property boundaries and the definition of real estate agency work;
- Successful outcome in [unlicensed trading prosecution](#);
- [Reaching buyers and sellers using Trade Me](#);
- A [compliance update](#), a [litigation update](#) and [Complaints Assessment Committee](#) decisions;
- Information on [licensing statistics](#) as at 28 February 2013.

## **New Code of Conduct 2012**

It is less than a month until the new Code of Conduct 2012 comes into effect on 8 April 2013.

If you have not already checked out the information on the new Code of Conduct 2012 - please take the time to [read about the changes](#) and [watch our video](#).

You can now purchase copies of the new Code of Conduct. Just call us on 0800 367 7322 and select option 3. They cost \$50 for a bundle of 50 or \$500 for a box of 500. We are happy to replace copies of the old 2009 Code of Conduct with the new 2012 Code of Conduct. However we will only accept (and replace) bundles of 50 e.g. if you send us 100 copies you will get 100 copies of the new Code of Conduct, but if you send us 75 copies you will only get 50 back. We will not replace anything under 50 copies.

There will be further communication later this month/early April to remind you about the changes and what they mean for you. If you have any questions please [email us](#) or call us on 0800 367 7322 or (04) 471 8930.

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## **Tribunal guidance**

### **Property boundaries**

In a recent appeal decision ([\[2013\] NZREADT 3](#)) the Tribunal has provided some helpful guidance about locating boundaries. The Tribunal says that it is important that real estate agents always try to locate the boundaries to a property they are marketing.

Step one is to look for the boundary pegs. If they cannot be found then the next step is to discuss this with the vendor or the vendor's solicitor.

If an agent is asked about a boundary issue by a prospective purchaser and there is no clear answer, the agent should advise the prospective purchaser to consult with a surveyor or solicitor. It is also possible that someone at the relevant Local Council or Land Transfer Office might be able to provide clarity about the boundary.

Basically, you need to be able to provide evidence about where the boundary is. If you can't provide this evidence, then you need to tell the prospective purchaser that there is uncertainty about where the boundary is and that they should get advice.

### **The meaning of real estate agency work is broad**

A licensee has been found guilty of unsatisfactory conduct as a result of an appeal for taking files from a previous employer ([\[2013\] NZREADT 14](#)).

At first glance, this behaviour may appear to fall outside of the jurisdiction of the Real Estate Agents Act 2008 and have nothing to do with the definition of real estate agency work i.e. from "services provided, in trade, on behalf of another person for the purpose of bringing about a transaction". However, the Tribunal is clear that real estate agency work will be given a broad meaning and that this matter came "fair and square" within their jurisdiction.

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### **Successful outcome in unlicensed trading prosecution**

Lincoln (Li) Wu was charged with, and plead guilty to, two counts of carrying out unlicensed real estate

agency work under [s 141](#) of the Real Estate Agents Act 2008 (the Act). Property Asia Realty Limited was charged with employing an unlicensed person as an agent or salesperson under [s 143](#) of the Act. The company also plead guilty to the charge.

The charges related to Mr Wu showing potential purchasers through a property and advertising that property and a number of others for sale with himself as the contact person. The advertisements for sale were listed on the Property Asia Realty website.

At sentencing this morning at the Auckland District Court, Judge Mathers imposed fines totalling \$24,750: \$18,750 against Property Asia Realty Ltd and \$6,000 against Mr Wu personally (\$3,000 on each charge). The defendants must also pay court costs. The offending was described by the judge as 'blatant' with no mitigating features apart from guilty pleas.

Mr Wu is a former licensee and is the director and sole shareholder of Property Asia Realty. His licence was cancelled in July 2010 due to non-disclosure of previous criminal convictions. Property Asia Realty has previously been charged and convicted of an offence under [s 143](#) of the Act for employing an unlicensed person as an agent or salesperson. In that case Property Asia was fined \$12,000.

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### **Reaching buyers and sellers using Trade Me**

Promoting and protecting the interests of consumers is one of the Authority's main purposes. One of the ways we do this is by providing information about the buying and selling process. We believe that if you have informed buyers and sellers, then there is a greater chance that the expectations of the agent and the buyers and sellers are aligned, and the transaction will go smoothly.

Our challenge is letting buyers and sellers know right at the start of the buying and selling process that we have information that can help them. We started working with Trade Me a year ago to help us achieve this. Over the last year there have been over 15,000 new visits to our website as a direct result of our Trade Me advertising. Our Trade Me advertising includes an ad on the property homepage (residential), a link in the buyers checklist which appears on every listing page, a link in the sellers guide and this month we have information in their property newsletter which is sent to around 700,000 consumers.

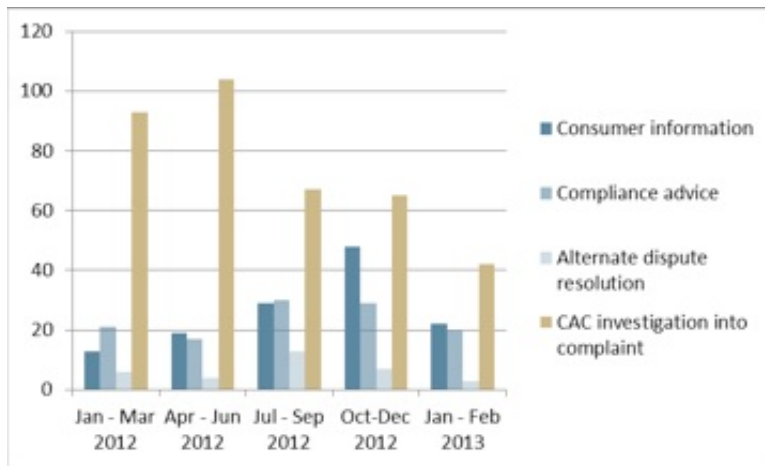
We are very pleased with these results and this year will be doing more work to let buyers and sellers know about us including using social media and continuing our work with other organisations who deal with buyers and sellers of property.

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## **Compliance update**

Since the beginning of 2013 we are receiving on average 12 complaints a week. Of these, less than half (44%) are referred to a CAC. The rest are resolved via consumer information, compliance advice or mediation. The majority of these complaints are about marketing/advertising, incompetence/negligence, non-disclosure and undue pressure.

### **Graph 1: Responses to complaints received since 1 January 2012**

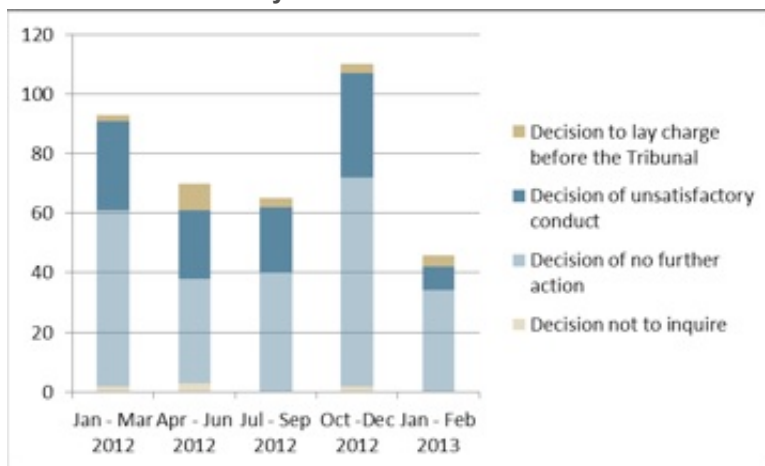


29% of complaints were made by the seller, 17% by the buyer, 17% by a licensee, 2% by a solicitor and 35% by people who dealt with the agent as a prospective buyer or seller.

Graph 2 below shows that there was an increase in decisions issued during October - December 2012. This reflects process improvements which resulted in an increased number of decisions being issued over that period.

Since 1 January 2012, approximately one third of complaints referred to a CAC have resulted in a decision of unsatisfactory conduct or referral to the Tribunal to lay charges of misconduct. The remaining complaints that were investigated resulted in a decision of no further action.

**Graph 2: CAC decisions since 1 January 2012**



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## Complaints Assessment Committee decisions

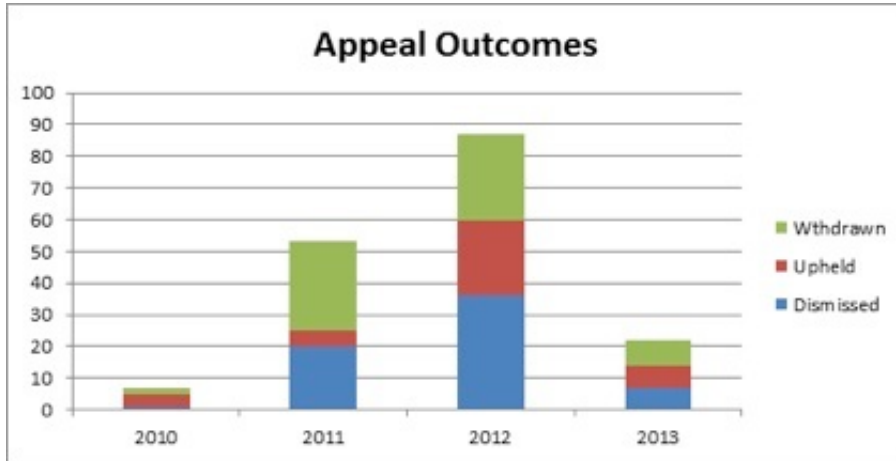
26 decisions of unsatisfactory conduct have been published since our last newsletter on 12 February 2013. You can get an overview of these decisions on our [website](#).

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# Litigation update

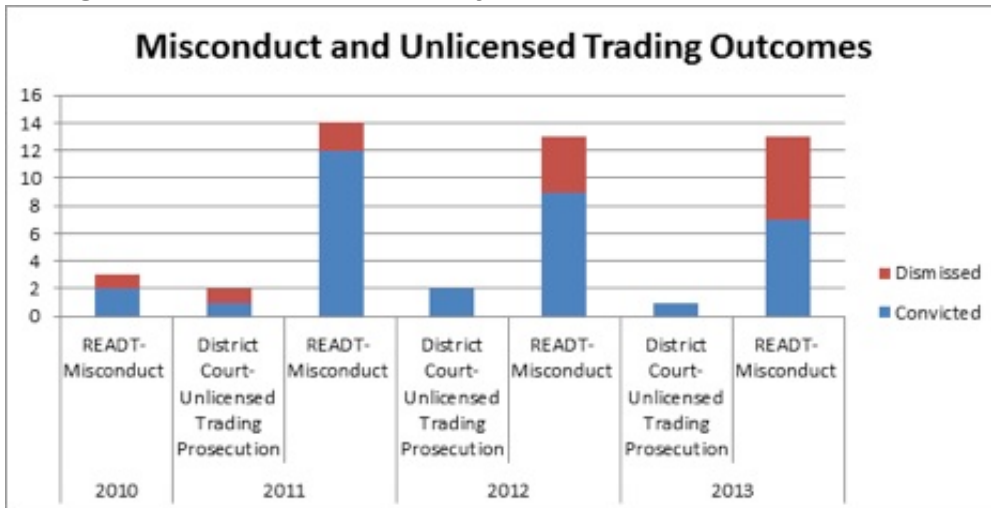
Graph 3 shows the outcomes of all appeals since the Authority started in November 2009. The graph includes appeals of Complaints Assessment Committee and Tribunal decisions and licensing decisions made by the Registrar. The last three years has seen a steady increase in the number of appeal decisions made. Interestingly, a large number of appeals end up being withdrawn.

**Graph 3: Appeal outcomes since the Authority started**



Graph 4 shows the outcomes of charges laid by the Authority - both with the Tribunal and the District Court - since the Authority started in November 2009. The majority of charges (72%) laid by the Authority are successful.

**Graph 4: Charges outcomes since the Authority started**



No decisions of misconduct have been published since our last newsletter on 12 February 2013.

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# Licensing update

At the end of February 2013 there were 13,637 active licences. This is an increase of 115 on the 13,522 licensees at the end of January 2013.

**Table 1: Licence numbers at 28 February 2013**

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	Active	Suspended	Total
<b>Individual</b>	<b>12,812</b>	<b>3,204</b>	<b>16,016</b>
Agent	1,940	292	2,232
Branch manager	482	78	560
Salesperson	10,390	2,834	13,224
<b>Companies</b>	<b>826</b>	<b>100</b>	<b>925</b>
<b>Total</b>	<b>13,637</b>	<b>3,304</b>	<b>16,941</b>

[Licence numbers by region](#)

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## Things to Remember

### **Approved Guides:**

Licenses 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 [Your obligations](#) 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)