



# Authority Update



## CEO/Registrar

Welcome to the May newsletter. A very busy time of the year is coming to an end for the Authority with the completion of the annual licence renewal process.

There are now 12,032 individuals licensed to work in the real estate industry and 809 companies. This is a drop of 1,061 licences since 30 April 2011. It is interesting to note that new licence applications for the first four months of this year are up 87% compared with the same period last year. Check out the details later in this newsletter.

Also included in this newsletter is:

- A reminder on the Information Sheet we published in late March on the recent Real Estate Agents Disciplinary Tribunal (Tribunal) decision on [licensee obligations for checking titles](#);
- Information on a recent Tribunal decision about [joint sole agencies](#);
- An update on [consumer advertising](#) we are doing with Trademe;
- Information about [two new Information Sheets](#) that have been developed for the industry on Agency Agreements and Unit Titles;
- An update on the [continuing education programme](#);
- Information on [licensing statistics](#) as at 30 April 2012; and
- A general [compliance update](#) including recent decisions from the [Tribunal](#) and the [Complaints Assessment Committees](#).

### Compliance Guidance Information

#### *Checking of Titles*

As a result of a decision made by the Tribunal, we released an Information Sheet to the industry on 26 March on our view of what a licensee's obligations are to check the titles of properties they are selling.

As a reminder, in our view, a licensee needs to:

- obtain a copy of the certificate of title;
- review it to verify the information on tenure, ownership, legal description and property description in the listing document matches the information on the title;

- establish whether or not there are interests registered on the title such as covenants, caveats, easements etc. that should be brought to the attention of interested parties;
- if necessary have a lawyer assist the licensee to interpret what those restrictions mean; and
- ascertain zoning and town planning regulations or Council requirements so that the licensee is in a position to point out what restrictions might apply to that property e.g. they should be able to point out how a property is zoned and what zoning restrictions apply.

The licensee is then in a position to:

- explain clearly and simply any restrictions which might affect the rights of a purchaser; and
- advise the parties to seek proper legal advice on such matters.

A licensee is not expected to personally interpret complex titles or provide an in-depth analysis of town planning implications. Licensees are not expected to be lawyers or town planners.

[Checking of Titles Information Sheet.](#)

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### ***Joint Sole Agencies***

In a recent decision the Tribunal has set out what it believes to be best practice for the industry when dealing with joint sole agencies.

- The vendor/client must receive a copy of the Authority's booklet "New Zealand Residential Property Agency Agreements Guide."
- The arrangements between the agencies is to be recorded, in writing, at the time the listing agreement is signed and will include arrangements about:
  - Commission sharing, who receives what and on what basis
  - Open home times (if sharing open homes)
  - Marketing information
  - Signage (shared signage or separate)

This is to avoid any misunderstanding and to ensure that the marketing and commission sharing arrangements are transparent, and to avoid the vendor/client being placed at risk of paying two commissions.

- In all cases a copy of the conjunctual arrangement is to be provided to each party including the vendors.

The Tribunal also noted that when the property is being sold as the result of a separation, best practice is for the agent listing the property to ensure that they get the signature, or at the very least email or written confirmation, from the other party that they are happy for the property to be sold by that agency.

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### **Consumer Activities**

One of the purposes of the Authority is to promote and protect the interests of consumers. One of the ways that we are doing this is by providing information on the property buying and selling process. This is based on the premise that the more informed buyers and sellers are at the start of the process, the greater the likelihood that the expectations of the agent and the buyers and sellers will be aligned.

We now have a number of initiatives underway to inform buyers and sellers at the start of the buying and selling process.

We have been working with TradeMe since March and have been trialling an advertisement on the TradeMe property homepage, a link in their online Sellers Guide and as of 24 April a link in their Property Buyers Checklist (which appears on every residential property listing). If clicked on, these take you to a page on our website that outlines the following key things people should know before buying or selling a property:

- Get your own independent legal advice. Agency agreements and sale and purchase agreements are legally binding contracts.
- Read and understand the agency agreement and sale and purchase agreement before you sign them.
- Remember you can negotiate the conditions in the sale and purchase agreement.
- Remember that the agent is working for the seller. However, they must still treat the buyer fairly.
- Make sure you understand how the sales process (auction, tender, negotiation etc.) for the house you are interested in buying works. Ask the agent and/or your lawyer.
- Check if the agent you are thinking of dealing with has had a complaint upheld against them.
- If you have a problem with your agent – let us know.

The purpose of this trial is to see what the most effective placement on the TradeMe website is for providing information to potential buyers and sellers.

We are also considering how the Authority might be able to use social media to engage with both buyers and sellers and the industry, and are looking to work with consumer organisations and organisations that buyers and sellers engage with, such as banks, Quotable Value etc.

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### **Agency Agreement and Unit Title Information Sheets**

The Authority and REINZ have developed an Information Sheet for the industry about [agency agreements](#). This Information Sheet covers what you need to know and do before entering into an agency agreement, requirements for sole agency agreements, cancelling of agency agreements and some guidelines on approaching a client who already has a sole agency in place with another agency.

A second Information Sheet, on [unit titles](#), has been developed for both buyers and sellers and the industry by the Authority, REINZ and the Home Owners and Buyers Association of New Zealand (HOBANZ).

New disclosure requirements for the buying and selling of unit title properties were introduced by the Unit Titles Act 2010. This Information Sheet outlines what these disclosure requirements are and provides guidance on what needs to be done by both the licensee, and the buyer and seller, to ensure that these requirements are met.

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### **Continuing Education**

The providers of verifiable continuing education are now running courses.

A list of the 23 approved providers for verifiable continuing education is available on our [website](#). You can choose to use any of these providers.

Please do not send us your verifiable continuing education certificates – you should keep these for your own records. We will receive confirmation directly from your approved provider so you do not need to send us your certificates.

Don't forget to keep written records of what activities you do to complete your 10 hours of non-verifiable continuing education. You can find a template for this log in the Continuing Education Guide available on our [website](#).

You have until 31 December 2012 to complete your 20 hours of continuing education.

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

## Licensing Update

Between 1 May 2011 and 30 April 2012 the number of active licences dropped by 1,061 to 12,841.

In the same period the number of suspended licences increased by 334, 1,771 licences expired and 1,031 new licences were issued.

While the overall number of licences has dropped, 381 new licences were issued in the first four months of 2012. This compares to the 204 issued in the same period in 2011 and is an increase of 87%.

Over time further analysis will be able to be carried out on turnover of license numbers and how long new licensees stay licensed. At this stage we know that 84% of the new licences issued in the period 1 May 2010 to 30 April 2011 are still active a year later.

**Table 1: Licence numbers**

	30 April 2011	30 April 2012	% change
Active	13,902	12,841	-7.6%
Companies	806	809	0.4%
Agent	2,020	1,923	-4.8%
Branch manager	525	473	-9.9%
Salesperson	10,551	9,636	-8.7%
<b>Suspended</b>	<b>3,199</b>	<b>3,533</b>	<b>10.4%</b>
Companies	84	101	20.2%

Agent	227	309	36.1%
Branch manager	94	90	-4.3%
Salesperson	2,794	3,033	8.6%
<b>Total</b>	<b>17,101</b>	<b>16,374</b>	<b>-4.3%</b>
<b>Not renewed</b>	<b>1,558</b>	<b>1,771</b>	<b>13.7%</b>
<b>New licenses Issued</b>	<b>1,858*</b>	<b>1,031</b>	<b>-44.5%</b>

\* A large number of new licence applications were received in June 2010 due to new qualification requirements coming into effect on 1 July 2010.

Active licence numbers in some regions decreased by more than the national drop of 7.6%. The regions with the greatest drop in numbers were Canterbury/Westland, Northland and Otago/Southland.

**Table 2: Licence numbers by region**

	Active			Suspended			Total		
	April 2011	April 2012	% Change	April 2011	April 2012	% Change	April 2011	April 2012	% Change
<b>Individual</b>	<b>13,096</b>	<b>12,032</b>	<b>-8.1</b>	<b>3,115</b>	<b>3,432</b>	<b>10.2</b>	<b>16,211</b>	<b>15,464</b>	<b>-4.6%</b>
Auckland	5,518	5,189	-6.0	1,155	1,329	15.1	6,673	6,518	2.3
Bay of Plenty	805	732	-9.1	255	268	5.1	1,060	1,000	-5.7
Canterbury / West Coast	1,659	1,407	-15.2	398	471	18.3	2,057	1,878	-8.7
Gisborne / Hawkes Bay	426	395	-7.3	113	114	0.9	539	509	-5.6
Nelson/Marlborough	423	391	-7.6	108	118	9.3	531	509	-4.1
Northland	476	402	-15.5	126	135	7.1	602	537	-10.8
Otago / Southland	876	771	-12.0	177	211	19.2	1,053	982	-6.7
Taranaki / Wanganui / Manawatu	697	646	-7.3	185	196	5.9	882	842	-4.5

Waikato	983	930	-5.4	307	277	-9.8	1,290	1,207	-6.4
Wellington / Wairarapa	1,139	1,056	-7.3	211	232	10.0	1,350	1,288	-4.6
Not specified	94	113		80	81		174	194	
<b>Company</b>	<b>806</b>	<b>809</b>	<b>0.4</b>	<b>84</b>	<b>101</b>	<b>20.2</b>	<b>890</b>	<b>910</b>	<b>2.2</b>
Auckland	301	303	0.7	23	32	39.1	324	335	3.4
Bay of Plenty	55	53	-3.6	5	10	100.0	60	63	5.0
Canterbury / West Coast	112	114	1.8	19	21	10.5	131	135	3.1
Gisborne / Hawkes Bay	25	25	0.0	3	3	0.0	28	28	0.0
Nelson/Marlborough	32	33	3.1	2	2	0.0	34	35	2.9
Northland	40	37	-7.5	2	3	50.0	42	40	-4.8
Otago / Southland	62	64	3.2	8	8	0.0	70	72	2.9
Taranaki / Wanganui / Manawatu	45	47	4.4	4	3	-25.0	49	50	2.0
Waikato	73	73	0.0	9	9	0.0	82	82	0.0
Wellington / Wairarapa	61	59	-3.3	7	9	28.6	68	68	0.0
Not specified	1	1		2	1		3	2	
<b>Total</b>	<b>13,902</b>	<b>12,841</b>	<b>-7.6</b>	<b>3,199</b>	<b>3,533</b>	<b>10.4</b>	<b>17,101</b>	<b>16,374</b>	<b>-4.3</b>

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## Compliance Update

The following tables set out recent compliance activity. At this stage it is still a little early to start drawing too many assumptions about on-going compliance trends as our new compliance approach was only

implemented on 1 July 2011.

**Table 3: Responses to concerns received since 1 July 2011**

	Jul-Sep 2011	Oct-Dec 2011	Jan-Mar 2012	April 2012
Consumer information	46	29	13	5
Compliance advice	27	26	21	2
Alternate dispute resolution	18	7	6	1
CAC investigation into complaint	136	116	86	22
<b>Total</b>	<b>227</b>	<b>178</b>	<b>126</b>	<b>30</b>
<b>Open concerns</b>				<b>192</b>

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 68% respectively. However, CAC's are having to review fewer cases due to a decrease in the number of concerns received.

The speed at which the Authority is processing concerns is increasing over time as CAC's are now only inquiring into matters of greater consequence.

As we improve and implement more efficient processes we expect to get a better understanding of why certain trends emerge and will use this information to continue to improve our processes and our communication with both consumers and the industry.

**Table 4: CAC decisions since 1 July 2011**

	Jul-Sep 2011	Oct-Dec 2011	Jan-Mar 2012	April 2012
Decision not to inquire	3	2	1	1
Decision of no further action	111	72	58	5
Decision of unsatisfactory conduct	41	27	28	6
Decision to lay charge before the Tribunal	8	1	2	1
<b>Total</b>	<b>163</b>	<b>102</b>	<b>89</b>	<b>13</b>

Decisions appealed	41	25	10	0
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The above table shows the total number of decisions that have been made by CAC's 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 number of no further action decisions has decreased since the July-September 2011 quarter. This is to be expected as 'concerns' received prior to July 1 2011, that would previously have been referred to a CAC, post 1 July 2011 are resolved via other interventions such as compliance advice or consumer information.

It is also worth noting an emerging trend since 1 July 2011 is that fewer CAC decisions are being appealed. Note that 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

Table 5 below summarises all Tribunal decisions made from when the Tribunal first sat in November 2010 through to March 2012.

In total 63 cases have been decided. There are a further 60 cases that are before the Tribunal awaiting their consideration.

We are currently reviewing the nature and comparability of the penalty decisions made by the Tribunal to provide guidance to the Complaints Assessment Committees (CACs) for their decisions.

The table below does not include any decisions of misconduct that are still to have orders decided.

**Table 5: Tribunal decisions November 2010 to March 2012**

Proceeding	Successful	Unsuccessful
Appeal against Registrar's licensing decision	4	1
Application by Authority for interim suspension of licence	1	0
Appeal against CAC decision not to inquire	2	1
Appeal against CAC decision of no further action	3	13
Appeal against CAC decision of unsatisfactory conduct	4	11
Appeal against CAC decision to lay charges	0	2



CAC charges of misconduct	15	3
Application for non-publication of name	2	1
<b>Total</b>	<b>31</b>	<b>32</b>

Since our last newsletter on 14 February 2012, two new decisions of misconduct have been published. One relates to willfully retaining a deposit ([\(2012\) NZREADT4](#)) and the other relates to, amongst other things, failing to provide all written offers on a property and marketing a property for sale without the authority of all the owners ([\(2011\) NZREADT 40](#)).

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## Complaints Assessment Committees Decisions



20 decisions of unsatisfactory conduct have been published since our last newsletter. These decisions fall into the following categories:

Topic	Number	Relevant Cases
• Sole Agencies	1	<a href="#">CB5582189/CB5624093</a>
• Conflict of interest	1	<a href="#">CA5104542</a>
• Multi offers	1	<a href="#">CA4697319/CA4702647</a>
• Not making proper investigations about the condition of a property	1	<a href="#">CA4697319/CA4702647</a>
• Supervision	1	<a href="#">CA4697319/CA4702647</a>
• Written appraisals	3	<a href="#">CA4103112</a> <a href="#">CB5747303</a> <a href="#">CA3982899</a>
• No listing authority	1	<a href="#">CB5575151</a>
• Misrepresentation	4	<a href="#">CA4854729</a> <a href="#">CA4097838</a> <a href="#">CA5293443</a> <a href="#">CA2972289</a>
• Trust Accounts	2	<a href="#">CA4057266</a>

### 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).

		<a href="#">CA4097109</a>
		<a href="#">CA4080018</a>
		<a href="#">CA4097037</a>
• Incompetency/negligence	5	<a href="#">CA5104542</a>
		<a href="#">CB5541743</a>
		<a href="#">CA3552411</a>
• Non-disclosure	2	<a href="#">CA4408968</a>
		<a href="#">CA4856034</a>
• Advertising/Marketing	3	<a href="#">CA3982899</a>
		<a href="#">CA4108242/CA4108287</a>
		<a href="#">CA4103112</a>

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

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**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).**

#### **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.

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

