



# Authority Update



November 2012

## CE/Registrar

Welcome to our November update. The end of October saw us hosting another Regulators Forum. This forum is attended by franchise heads and REINZ and is an opportunity for us to meet face to face with members of the industry to update them on our activities and discuss areas of interest. For a copy of our presentation to this forum click [here](#).

Please remember that you need to complete your 2012 continuing education requirements by the end of the year.

We were anticipating launching our new website in November. However this has been delayed until the New Year. The development of an online portal for licensees is underway and we are aiming to have this ready for renewals in 2013. We will keep you posted on progress and send you everything you need to know about getting a logon and using the portal closer to the time.

Work on the updated Code of Conduct is progressing and we have sent it to the Minister for approval. The earliest that the new Code will come into effect is early April 2013. You will be fully informed about the changes to the Code and what you will need to do to make sure you meet the requirements of the new Code.

Also included in this newsletter is:

- Successful unlicensed trading [prosecutions](#);
- Guidance from the Tribunal on [advertising homes as 'architecturally designed'](#);
- An update on our [four new industry advisory groups](#);
- Information on our approach to [collecting unpaid fines or monetary orders](#);
- A reminder that all licensees need to complete their 2012 [continuing education requirements](#) by 31 December 2012;
- A general [compliance update](#) including recent decisions from the [Tribunal](#) and the [Complaints Assessment Committees](#)
- Information on [licensing statistics](#) as at 31 October 2012.

### Successful unlicensed trading prosecutions

The Authority has successfully prosecuted Gore man Ewen McLeod in the District Court for carrying out real estate agency work without a licence. The activities Mr McLeod carried out included:

- Being paid to assist the vendors with the sale of their property
- Arranged advertising which advertised him as the contact person
- Showed interested purchasers through the property
- Ran an open home
- Was prepared to negotiate on behalf of vendors and draw up sale and purchase agreements.

Mr McLeod contended that his activities amounted to no more than the provision of general advice to assist the vendors to locate and negotiate with potential purchasers, however this was rejected by the Court. Judge Moran held that *"...the moment the service provider goes beyond dealing with the owners and begins dealing with potential buyers in an endeavour to bring about a sale, he is providing a service on behalf of the owners and he is performing real estate agency work."*

Mr McLeod was found guilty of unlicensed trading. A sentencing decision is still to be made.

We have also laid unlicensed trading charges against an Auckland property trader. That person has pled guilty and we are waiting on a sentencing decision.

We continue to have a strong focus on unlicensed trading with much of our focus being on the part that licensees might play in consumers being taken advantage of by property traders.

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### Advertising homes as 'architecturally designed'

The Real Estate Agents Disciplinary Tribunal has recently released a decision dealing with eight separate appeals by licensees against Complaints Assessment Committee (CAC) findings of unsatisfactory conduct against them.

In each case, the licensees advertised properties as being 'architecturally designed' when they had not been designed by a registered architect. In all but one of the cases, the people being described as the 'architect' did not hold tertiary qualifications in architecture.

In considering the complaints (from the Registered Architects Board), the CAC held that advertising a property as being 'architect designed' when the person was not a registered architect and did not hold a degree in architecture, was misleading.

On appeal to the Tribunal, the licensees argued that a person does not need to hold a tertiary qualification in architecture in order to be an architect.

The Tribunal accepted that a degree in architecture is not a prerequisite to being able to be an architect, and neither is registration with the New Zealand Registered Architects Board.

The test the Tribunal used for calling someone an architect is whether the person has the necessary skills or knowledge to be able to carry out the work of an architect. On the basis of this test, the Tribunal found that the findings of unsatisfactory conduct against each of the licensees could not stand, and the CAC decisions of unsatisfactory conduct were overturned.

While the Tribunal overturned the findings of unsatisfactory conduct they expressed the view that it is very disturbing that people who are no more than architectural designers or draughts people are being described as prominent architects, and that while it overturned the CAC decisions, the advertisements were close to breaching rule 6.4 of the Rules of Professional Conduct and Client Care (*Rule 6.4: a licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or fairness be provided to a customer or client*).

The Tribunal is still very uncomfortable with any suggestion that purchasers may be misled as to the merits of the design of buildings they might purchase. The Tribunal expects licensees to be aware of the issue and to be very careful in their representations about property designers.

In summary:

- A person does not need to hold a tertiary qualification in architecture to carry out the work of an architect
- A person does not need to be registered as an architect to carry out the work of an architect
- A person needs to have the necessary skills and knowledge to be able to carry out the work of an architect in order to be called an architect
- Despite this, licensees should be very careful in their advertising of 'architect designed' properties and, given the publicity this issue has received should, amongst other things, check the register maintained by the New Zealand Registered Architects Board prior to making representations about a building's design. It is possible, given the concerns expressed by the Tribunal, that if a complaint is made by a consumer that alleges they were induced into buying a property on the basis of it being architecturally designed, that a finding of unsatisfactory conduct would be made.

You can read the full Tribunal decision [here](#).

This newsletter (in the [Complaints Assessment Committee Decisions section](#)) refers to two decisions of unsatisfactory conduct made against licensees for describing a property as being designed by an architect when it wasn't. These decisions still stand as the decisions were not appealed.

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### Industry advisory groups

As advised in previous newsletters we are setting up four industry advisory groups. These groups cover four core areas of the industry - residential, commercial, rural and business brokers and will help us to keep across emerging trends and challenges and gain insight into each particular business area.

Applications have been accepted and we are very happy with the mix of skills and experience that will be represented in each group. We will announce the group members in our next newsletter.

The first joint meeting for all advisory groups is scheduled for the end of November.

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### Collection of fines

All fines and monetary orders must be paid within the timeframe specified by the Complaints Assessment Committee (CAC) or Tribunal, or within 60 days. We are now taking any unpaid fines or monetary orders to a CAC to decide what action to take against the licensee involved. The CAC, under section 99 of the Act, has the ability to suspend a person's licence until the money is paid, and if that money is not paid within 12 months, to cancel that person's licence.

We currently have 3 unpaid fines or monetary orders that will be taken to a CAC for action in the next few months.

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### **Continuing education reminder**

At the end of September 2012 the providers of this year's verifiable continuing education were asked to provide us with details of the licensees who had completed their continuing education, or were enrolled in the course.

As at the beginning of October, 5,300 licensees had completed their 2012 verifiable continuing education, 4,400 are enrolled and over 1,500 licensees are exempt.

This means that there are over 1,600 licensees who are yet to complete their continuing education for 2012. We have started contacting these licensees to discuss their situation and to ensure any issues are resolved now, whilst there is still time for them to complete their continuing education. The licensees we have contacted so far are falling into the following groups:

- Those who have enrolled, but for some reason their course provider did not notify us
- Those who are intending to complete a course in November, or December 2012
- Those who qualify for an exemption from continuing education, due to fact they will have completed the Real Knowledge Programme with the Skills Organisation, by the end of December 2012
- Those who are not intending to renew their licence in 2013, and
- Those who believed they were exempt from continuing education, but are not.

Please remember that if you do not complete the 2012 continuing education requirements by the end of the year you run the risk of having your licence cancelled.

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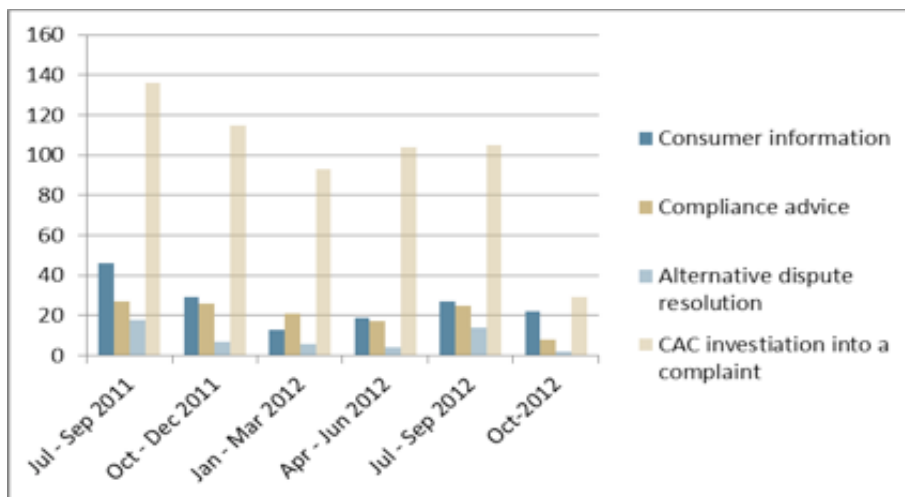


**Kevin Lampen-Smith**  
**Chief Executive/Registrar**

## **Compliance Update**

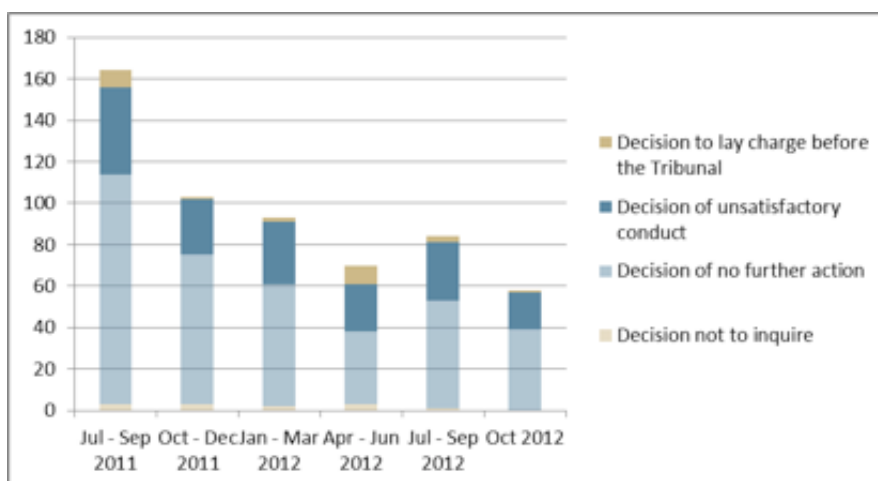
The continuing impact of the triage approach introduced in July 2011 is that about 40% of complaints received are dealt with through other means (consumer information, compliance advice and mediation). This provides a more effective and efficient outcome for complainants and licensees.

### **Graph 1: Responses to complaints received since 1 July 2011**



Graph 2 shows that the trend of a decline in the number of decisions of "no further action" has levelled out in the July - September 2012 quarter. The overall reduction in decisions of "no further action" is attributed to our triage approach where less serious complaints are being resolved without being referred to a CAC.

**Graph 2: CAC decisions since 1 July 2011**



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## Complaints Assessment Committee Decisions

5 decisions of unsatisfactory conduct have been published since our last newsletter on 24 September 2012.

**Table 1: Decision categories**

Topic	Number	Relevant Cases
• Describing a property as being designed by an architect when it wasn't	2	<a href="#">CA5300274</a>

[CA4919088](#)

• Did not make the vendor aware that they may have to pay two commissions	1	<a href="#">CB5630303</a>
• Concealed the vendors GST position	1	<a href="#">CA4689696</a>
• Failed to identify that a plan provided to purchasers was inaccurate; misrepresented in advertising that the contract had "fallen over" and provided personal details without permission	1	<a href="#">CB5812778</a>

We are currently working through a large number of Complaints Assessment Committee decisions which will be published over the coming weeks.

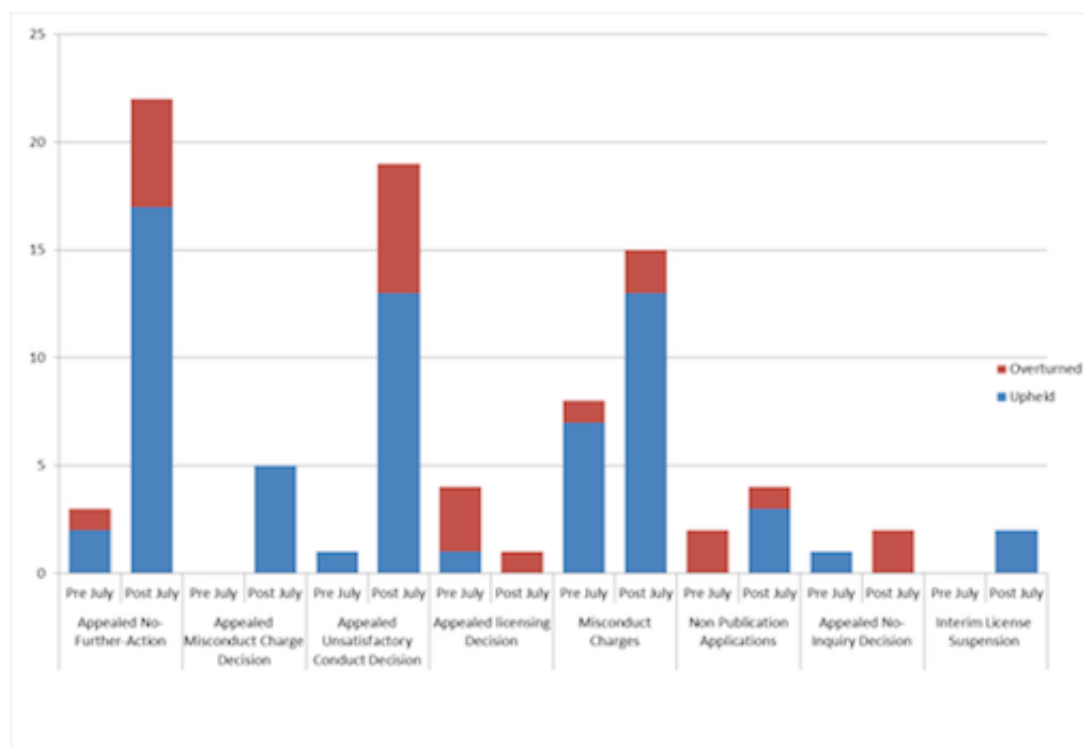
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## Real Estate Agents Disciplinary Tribunal Decisions

Graph 3 below summarises all Real Estate Agents Disciplinary Tribunal (Tribunal) decisions made from when the Tribunal first sat in November 2010 through to 25 October 2012.

In total, 87 cases have been decided. There are a further 94 cases that are before the Tribunal awaiting their consideration.

**Graph 3: Tribunal decisions to 31 October 2012\***



*\*Note that the timeframes referred to are pre July 2011 and post July 2011.*

[View this graph on our website.](#)

No new decisions of misconduct from the Tribunal have been published since our last newsletter on 24 September 2012.

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## Licensing Update

At the end of October 2012 there were 13,253 active licences. This is an increase of 412 licences since 1 April 2012 and is due to the increased number of new licence applications we have been receiving this year.

**Table 2: Licence numbers 30 October 2012**

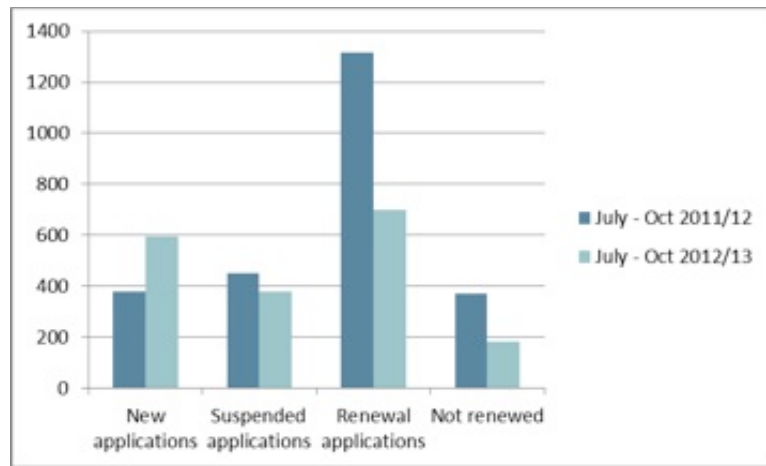
	Active	Suspended	Total
<b>Individual</b>	<b>12,436</b>	<b>3,254</b>	<b>15,690</b>
Agent	1,928	305	2,233
Branch manager	473	84	557
Salesperson	10,035	2,865	12,900
<b>Company</b>	<b>817</b>	<b>99</b>	<b>916</b>
<b>Total</b>	<b>13,253</b>	<b>3,353</b>	<b>16,606</b>

[Licence numbers by region.](#)

Graph 4 shows that nearly 600 new licences were issued in the July - October 2012 period. This is significantly more than for the same period in 2011.

However, the number of renewal applications processed in July - October 2012 is significantly lower than for the same period in 2011. This is because in 2011 Christchurch based licensees were able to defer renewal and payment from 31 March to 30 September 2011 which led to an artificially high renewal rate for this period.

**Graph 4: Approved licensing applications**



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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 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)

