



Authority Update



October 2011

CEO/Registrar

In this newsletter...

- We update you with where things are at with continuing education.
- We recommend that licensees only use the word "architect", in any form, if the designer of the property is listed on the New Zealand Registered Architects Board register.
- We remind you that the Act also applies to commercial, industrial and rural property transactions, as well as residential transactions.
- No Tribunal decisions of misconduct have been published since our last newsletter.
- Twelve decisions of unsatisfactory conduct have been published since our last newsletter ranging from marketing a property without a valid listing agreement to describing a property as being designed by an architect when it was not.

Continuing education update

The proposed continuing education framework is currently with the Minister and we are expecting this to be approved by the end of October. Once approved, the new continuing education rule will be gazetted in the New Zealand Gazette in late November and will come into effect on 1 January 2012.

We made some minor improvements to the framework as a result of the submissions we received during the consultation process.

We will shortly be inviting applications to become an approved provider of continuing education. Any organisation, including real estate agencies, can become an approved provider – as long as they meet the requirements.

Once the framework has been approved by the Minister, we will provide further information on our website and via this newsletter on what you need to do to ensure you meet your continuing education requirements.

Here are some key points on the proposed framework:

- Continuing education requirements will apply to all licensees who have an active licence.
- The framework recognises education licensees already undertake which is largely industry-based,

but also expects them to undertake specific education to reinforce their knowledge about complying with the Act, Regulations and Rules.

- Basic requirements will be that over one year, all licensees will need to successfully complete at least 10 hours of verifiable education (this is in relation to complying with the Act, Regulations and Rules) and 10 hours of non-verifiable education (this includes conferences, in house training, personal professional development and other industry-based training).
- The Authority has established an advisory group made up of representatives from consumers, the industry, and industry groups as well as an industry-based education expert. This group provides a way for all stakeholders to provide the Authority with their views on issues that may require specific education.
- Any organisation, including real estate agencies, will be able to apply to the Authority to be approved as a provider of continuing education to the real estate industry. These organisations will need to meet a range of criteria in order to become an approved provider.
- Continuing education will become a prerequisite for licence renewal. Individuals who suspend their licence after 1 January 2012 for a period of more than 12 months will need to complete 10 hours of verifiable refresher training when reentering the industry.

Use of the word "architect"

Over the past few weeks there has been some media coverage about complaints that have been laid by the New Zealand Registered Architects Board (NZRAB) about the use of the term 'architect-designed' by licensees marketing homes for sale, which have not been designed by a registered architect.

The Complaints Assessment Committee has made decisions of unsatisfactory conduct in four of these cases to date, and decisions of no further action in four cases. There are still a number of cases to be heard.

To be safe, we recommend that licensees take a cautious approach and only use the word 'architect', in any form, if the designer of the property is listed on the NZRAB register (you can access the register from www.nzrab.org.nz).

Commercial, industrial and rural property transactions

Some licensees seem to have the mistaken belief that the Act only applies to residential property transactions. This is not the case - the Act applies to commercial, industrial and rural property transactions as well as residential property transactions. However, there are some provisions of the Act that only apply to residential property. These are:

- The approved guide relating to agency agreements must be provided before the agency agreement for the sale of residential property is signed. The person must sign an acknowledgement that they have received the approved guide (section 127).
- The approved guide relating to sale and purchase agreements must be provided before a sale and purchase agreement is signed. The person must sign an acknowledgement that they have received the approved guide (section 133).
- Sole agencies for residential property can be cancelled by either party 90 days after the agreement was signed (section 131).

Any licensee who is carrying out agency work in respect of any commercial, industrial, rural and residential property transaction must make sure that they comply with the requirements of the Act, Regulations and the Code of Professional Conduct and Client Care at all times.

Keith Manch

Chief Executive/Registrar

Complaints Update

Our new compliance approach began on 1 July 2011. The following table provides an overview of concerns received in July (under the new approach).

We are unable to provide the numbers for September 2011 due to enhancements being made to our case management system. Updated numbers will be provided in the November newsletter.

Number of Concerns:	July 2011	August 2011	TOTAL
Concerns Received:	95	64	159
Concerns Categorised:			
• No Action:	1	1	2
• Consumer Information:	22	20	42
• Compliance Advice:	14	10	24
• Alternative Dispute Resolution (ADR):	8	6	14
• Enforcement:	47	19	66
• To be categorised:	3	8	11
• Withdrawn:	0	0	0
Open Concerns as at 31 August:			91
• ADR:			14
• Enforcement:			66
• To be categorised:			11
Closed Concerns as at 31 August:			68
• No Action:			2
• Consumer Information:			42
• Compliance Advice:			24
• ADR:			0
• Enforcement:			0
CAC decisions:	0	0	0
• No further action:	0	0	0
• Unsatisfactory conduct:	0	0	0
• Charges laid before the Disciplinary Tribunal (by a CAC):	0	0	0
Appeals:	0	10	10

Withdrawn appeals:	0	0	0
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The table below provides information on complaints we received prior to July 1 that are still in the process of being resolved.

We are unable to provide the numbers for September 2011 due to enhancements being made to our case management system. Updated numbers will be provided in the November newsletter.

Number of:	July 2010 – June 2011	July 2011	August 2011	TOTAL
Complaints/allegations:	685	0	0	685
Complaints/allegations under investigation:				230
Withdrawn complaints:	43	0	2	45
CAC decisions not to inquire:	111	6	1	118
CAC decisions made:	512	60	48	620
• Unsatisfactory conduct:	101	16	16	133
• No further action:	383	44	27	454
• Charges laid before the Disciplinary Tribunal (by a CAC):	28	0	5	33
Closed complaints:	655	66	49	770
Closed allegations:	106	67	0	173
Appeals:	80	11	10	101
Withdrawn appeals:	17	0	0	17

Licensing Update

Number of:	TOTAL (as at 30 September 2011)
Active licences:	13,747
• Company:	829
• Agent:	2,042
• Branch Manager:	528
• Salesperson:	10,348
Suspended licences:	3,316

• Company:	87
• Agent:	229
• Branch Manager:	91
• Salesperson:	2,909

Real Estate Agents Disciplinary Tribunal Findings of Misconduct



No decisions of misconduct have been published by the Real Estate Agents Disciplinary Tribunal since our last newsletter on 19 September 2011.

Unsatisfactory Conduct Decisions



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.

You can search for and view the decision documents on our [website](#).

Complaint Number: CA4032678/CA4065006

Decision made: 2 September 2011

Overview: Licensee (1) failed to provide written appraisals to his clients (contravened rules 9.5 and 9.8 of the Code of Professional Conduct and Client Care) and (2) did not act in the best interests of his clients when he requested them to sign a document authorising the early release of

Things to Remember

Approved Guides:

Licencees 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

deposits as he did not advise them of (a) the implications of them agreeing to release the deposits early (b) that he would be deducting his commission at the same time and (c) denied them the opportunity to seek legal advice.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the license and ordering the licensee undergo appropriate training/education in matters relating to the "listing for sale" process; refund 25% of the fees he charged his clients; pay a fine of \$3,000 to the Real Estate Agents Authority; pay complainant one \$352.00 in lost wages; and pay complainant two \$126.00 in lost wages.

Complaint Number: CA4796382

Decision made: 31 August 2011

Overview: Licensee breached rule 9.1 of the Code of Professional Conduct and Client Care as she did not follow the instructions that were provided by the complainant.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order censuring the licensee.

Complaint Number: CA5291994

Decision made: 22 August 2011

Overview: Licensee breached rule 9.15 of the Code of Professional Conduct and Client Care by advertising and/or marketing a property without valid listing agreements.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order censuring the licensee.

Complaint Number: CA4112463

Decision made: 19 August 2011

Overview: Licensee described the property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. . Order reprimanding the licensee and ordering her to pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA3917433

Decision made: 19 August 2011

Overview: Licensee breached rule 6.3 of the Code of Professional Conduct and Client Care and sections 72(a) and 72(b) of the Act by not being honest with the complainant.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of

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.

the Real Estate Agents Act 2008. Order censuring the licensee and ordering him to complete unit standard 26149: Demonstrate Knowledge of Licensing and Code of Professional Conduct under the Real Estate Agents Act 2008 and pay a fine of \$3,000 to the Real Estate Agents Authority.

Complaint Number: CA4103481

Decision made: 17 August 2011

Overview: Licensees described a property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order reprimanding the licensees and ordering them to each pay a fine of \$500 to the Real Estate Agents Authority,

Complaint Number: CA3949536

Decision made: 11 August 2011

Overview: Licensee described properties as being designed by an architect when they were not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders reprimanding the licensee and ordering them to pay a fine of \$500 to the Real Estate Agents Authority.

Complaint Number: CA3949509

Decision made: 11 August 2011

Overview: Licensee described a property as being designed by an architect when it was not (breach of rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care).

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order reprimanding the licensee.

Complaint Number: CA4071396

Decision made: 11 July 2011

Overview: Licensee got the complainant to sign the listing agreement when they were not the owner of the property; claimed commission based on an invalid listing agreement; and conducted himself in an unprofessional manner when contacting the complainant.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order that the licensee pay a fine of \$1,500 to the Real Estate Agents Authority.

Complaint Number: CA3633474

Decision made: 30 June 2011

Overview: Licensee fell short of her statutory obligations regarding the listing and marketing of the complainant's property as she did not have a listing agreement in place before showing the complainant's property to her clients and did not complete a written appraisal of the property at the time of listing.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order censuring the licensee and ordering her to apologise to the complainant and complete unit standard 26149: Demonstrate Knowledge of Licensing and Code of Professional Conduct under the Real Estate Agents Act 2008.

Complaint Number: CA3917613/CA5384847

Decision made: 20 June 2011

Overview: Licensee described the home as having three bedrooms in an email to the complainant (who lived overseas) when it only had two bedrooms.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. No orders could be made as the conduct occurred before the commencement of the Real Estate Agents Act 2008 and no penalty was available under the old regime.

Complaint Number: CA4070442

Decision made: 13 June 2011

Overview: Licensee did not disclose that the vendors for whom he acted on the sale of a property were his parents.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensee and ordering the licensee to apologise to the complainant.

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.

visit: reaa.govt.nz

