



Authority Update



September 2011

CEO/Registrar

In this newsletter...

- The Authority had its first successful unlicensed trading prosecution in July with a property trader being penalised \$25,000 for brokering a house sale between the owners and potential buyers.
- Recent Tribunal decisions provide guidance to the industry on building reports (recommending a building report doesn't absolve the licensee of liability) and charges of misconduct that don't relate to real estate agency work.
- CAC's can direct us to publish their decisions. Appealing a decision does not stop it from being published. To prevent publication, an application must be made to the Tribunal.
- Keith Manch has announced that he will be leaving his position as CEO/Registrar of the Real Estate Agents Authority in December.
- Two Tribunal decisions of misconduct have been published since our last newsletter. One for failing to disclose possible financial benefit from the sale of a property and one for inducing a vendor to sign a sale and purchase agreement in circumstances where the vendor believed the transaction to be a private sale and then seeking payment of commission by relying on the signed sale and purchase agreement as evidence of the agency.
- Thirteen decisions of unsatisfactory conduct have been published since our last newsletter ranging from false and misleading advertising to using misleading information to obtain a listing.

Property trader penalised \$25,000 for unlicensed trading

In July we had our first successful unlicensed trading prosecution with a property trader being penalised \$25,000 by the district court for carrying out real estate agency work without being licensed or exempt.

Dorien Forster and her company Home Buyers were found guilty of unlicensed trading for the brokering of a house sale between the owners and the potential buyers in 2010.

Judge Davidson said that although Forster had never claimed to be a real estate agent, it was clear she was acting like one and was undertaking real estate agency work on behalf of someone else (in this case both the vendor and the purchaser) as she conducted an open home, marketed the property, arranged viewings, prepared contracts and brought about the sale.

Fault was demonstrated when Home Buyers did not back out of the transaction and tried to secure a finder's fee after the buyer insisted on a contract directly with the sellers. Judge Davidson commented that both defendants became intent on securing their fee showing that throughout their conduct was all designed to secure a fee for selling a house without the usual protections afforded by the Real Estate Agents Act.

The \$25,000 penalty is an indication that the Courts consider unlicensed trading a serious issue.

This conviction and penalty has been appealed to the High Court.

Tribunal guidance

Some recent Real Estate Agents Disciplinary Tribunal (the Tribunal) decisions have provided some clear guidance to the industry on what is considered acceptable/unacceptable. A summary is provided below:

A builders report is not enough:

A licensee cannot avoid liability under rules 6.4 and 6.5 of the Code by simply suggesting that a building report is obtained. For instance if you know that a property may be prone to leaky home syndrome or is an earthquake prone building, you must disclose this.

Refer to appeal decision in [Wright vs CAC & Woods](#).

Charges of misconduct that don't involve real estate agency work:

The Tribunal is setting the bar high for findings of disgraceful conduct in cases that do not involve real estate agency work. Those cases suggest that charges under section [73\(a\)](#) for non-real estate agency work will generally only be successful where the behaviour complained about directly relates to a licensee's fitness to carry out real estate agency work.

Refer to [CAC v Walker](#), [CAC v Dodd](#) and [CAC v Maran](#).

Publishing of CAC decisions

Complaints Assessment Committees (CACs) can direct us to publish their decisions. Decisions we are directed to publish are accessible from our website.

Decisions are not published until after the period (20 working days) for lodging an appeal has passed. We now also indicate next to the published decision (on the website) and on the Public Register if the decision is being appealed. If relevant, the outcome of the appeal is also recorded.

Appealing a decision does not stop it being published. If a party wants to stop publication of a decision, they can make an application for an order to prevent publication to the [Real Estate Agents Disciplinary Tribunal](#).

Decisions are published so that buyers and sellers are informed, empowered and protected and to inform the industry about what is acceptable or unacceptable conduct.

Keith Manch is leaving the Authority in December

I will be leaving my position as CEO/Registrar of the Real Estate Agents Authority in December as I will be taking up the role of Chief Executive and Director of Maritime NZ. While I will leave with some regret, the opportunity provided by the Maritime NZ role was too good to pass up.

The Board is already working to identify my replacement and will ensure that there is a smooth transition. In the meantime it is business as usual as we continue to embed our new approach.

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).

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
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Open Concerns as at 31 August::			91
• ADR			14
• Enforcement			66
• To be categorised			11
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Closed Concerns as at 31 August			68
• No Action			2
• Consumer Information			42
• Compliance Advice::			24
• ADR::			0
• Enforcement::			0
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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
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Appeals:	0	10	10
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Withdrawn appeals:	0	0	0

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

Number of:	July 2010 – June 2011	July 2011	August 2011	TOTAL
Complaints/allegations:	685	0	0	685
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Complaints/allegations under investigation:				230
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Withdrawn complaints:	43	0	2	45
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CAC decisions not to inquire:	111	6	1	118
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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
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Closed complaints:	655	66	49	770
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Closed allegations:	106	67	0	173
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Appeals:	80	11	10	101
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Withdrawn appeals:	17	0	0	17

Licensing Update

Number of:	TOTAL (as at 31 July 2011)
Active licences:	13,658
• Company	820
• Agent	2,041
• Branch Manager	524
• Salesperson	10,273
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Suspended licences:	3,428
• Company	86
• Agent	230

• Branch Manager	95
• Salesperson	3,017

Real Estate Agents Disciplinary Tribunal Findings of Misconduct



Below is an overview of the latest decisions of misconduct that have been published by the Real Estate Agents Disciplinary Tribunal (the Tribunal):

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

Decision Number: (2011) NZREADT 7

Reference Number: READT 051/10

Decision Date: 4 May 2011

Penalty Date: 20 July 2011

Overview: The defendant failed to disclose to the complainant that they may benefit financially from the sale of the property to the complainant.

Determination: The defendant was fined \$4,000 and ordered to pay the complainant \$450.

Decision Number: (2011) NZREADT 13

Reference Number: READT 079/10

Decision Date: 27 June 2011

Overview: The defendant induced the complainant to sign a sale and purchase agreement for the sale of her property, when the agreement included no information to suggest that the defendant was a licensee or that the sale was being conducted through the defendant's employer real estate agent; and in circumstances in which the complainant believed the transaction to be a private sale. Subsequent to the signing of the agreement the defendant added her employer's details and sought payment of a commission from the complainant subject to a contract of agency, relying on the signed sale and purchase agreement as evidence of the agency.

Determination: Order that the defendant pay a fine of \$750. As the conduct occurred before the commencement of the Real Estate Agents Act 2008, orders were limited to those that were available under the Real

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:

Estate Agents Act 1976. It is noted that if the defendant had still been the holder of a salesperson's licence that the Tribunal would have given serious consideration to interfering with her licence.

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: CA2994564

Decision made: 12 August 2011

Overview: The licensee described a property with a granny flat as "home and income" which was likely to mislead potential customers.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order reprimanding the agency, that the agency pay a fine of \$500 to the Real Estate Agency Authority and that the principal agent of the agency undergo training in unit standards 23138; 23136; and 23134.

Complaint Number: CA3883791

Decision made: 8 August 2011

Overview: The licensee demanded payment of \$10,000 commission when he knew he was not entitled to do so.

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: CA4013778/CA4015281

Decision made: 26 July 2011

Overview: Licensees breached rules 6.3 and 6.4 of the Code of Professional Conduct and Client Care by engaging in false and

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.

misleading advertising when they made inaccurate claims about their market share.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders that the licensees publish an apology for and correction of the advertising and that each licensee pay a fine of \$1,000.

Complaint Number: CA3916146

Decision made: 20 July 2011

Overview: Licensee breached rule 6.4 of the Code of Professional Conduct and Client Care by advertising a property as "home and income" when it did not have the necessary consents to be called "home and income."

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order that the licensee apologise to the complainant and pay the complainant \$1,294.92 as rectification for costs and expenses incurred.

Complaint Number: CA3367992

Decision made: 5 July 2011

Overview: Licensee advertised a property for sale without having a signed agency agreement in place and did not advise the seller of the property of the risks of paying double commission (breach of Rules 6.3, 9.11 and 9.15 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 that the licensee apologise to the complainant.

Complaint Number: CA3909315

Decision made: 4 July 2011

Overview: Licensee breached Rule 6.4 of the Code of Professional Conduct and Client Care as he misled the complainants about the status of their contract and did not ensure that the complainants knew that they did not have a contract to purchase the property as soon as practicable.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensee, that he pays a fine of \$1,500 to the Real Estate Agents Authority and pays \$250 to the complainants as a contribution to their additional legal costs.

Complaint Number: CA3909801

Decision made: 4 July 2011

Overview: Licensee breached Rule 6.2 of the Code of Professional

Conduct and Client Care as she did not treat the parties fairly and act in good faith and Rule 6.4 for not providing the information that should be provided to a customer.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Orders censuring the licensee, that she pays a fine of \$250 to the Real Estate Agents Authority and pays \$250 to the complainants as a contribution to their additional legal costs.

Complaint Number: CA3625932

Decision made: 1 July 2011

Overview: Licensee used misleading information to obtain a listing.

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

Complaint Number: CA3350622

Decision made: 30 June 2011

Overview: Licensee did not disclose to the complainant the benefit he may have gained from the sale of the property as he was one of the trustees of the property for sale. The licensee was found to be in breach of section 136 of the Act and therefore Rules 5.2 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 that the licensee complete the unit standard course 26149A "Demonstrate knowledge of licensing and code of professional conduct under the Real Estate Agents Act 2008".

Complaint Number: CA3903528

Decision made: 24 June 2011

Overview: Licensee was in breach of section 142 of the Act by holding himself out as a branch manager, of Rule 9.15 of the Code of Professional Conduct and Client Care by advertising and/or marketing properties without holding a valid listing agreement and Rule 5.2 as he did not have a sound understanding of the Act and Rules.

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

Complaint Number: CA3829575

Decision made: 21 June 2011

Overview: Licensee breached rule 6.4 of the Code of Professional Conduct and Client Care as he advised the purchaser that the title for the purchased property did not involve a Body Corporate when it did. This influenced the purchaser's decision to buy the property.

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

Complaint Number: CA4039347

Decision made: 18 April 2011

Overview: The Licensee handled a multi-offer situation in a way that fell short of what a reasonable member of the public is entitled to expect from a reasonably competent licensee.

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

Complaint Number: CA3707112

Decision made: 8 March 2011

Overview: Licensee breached rules 6.1 and 6.2 of the Code of Professional Conduct and Client Care by making a comment implying that the complainants had acted dishonestly by not paying the commission due.

Decision/Penalty: Finding of unsatisfactory conduct under section 72 of the Real Estate Agents Act 2008. Order that the licensee pay \$3,500 to the complainants.

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

