

SCHEDULE 2 - Code of Conduct

Regulation 45

PART 1 – Preliminary

1. Definitions

(1) For the purposes of this Code of Conduct –

client, in relation to a property agent, means a person with whom the property agent has a contractual relationship authorising the property agent to carry out activities, as instructed by the person, that relate to the property agents industry;

customer, in relation to a property agent, means a person who –

(a) interacts with the property agent; and

(b) is not a client of the property agent;

regulations means the *Property Agents and Land Transactions Regulations 2006*.

(2) A term used in this Code of Conduct that is defined in the Act or the regulations has the same meaning as so defined.

2. Object of Code of Conduct

(1) The object of this Code of Conduct is to increase the accountability of property agents to clients and customers of the property agent.

(2) This Code of Conduct aims to achieve its object by –

(a) regulating the conduct of property agents; and

(b) regulating the professional practice of property agents by providing guidance on what does or does not constitute unsatisfactory professional conduct and professional misconduct; and

(c) providing a system to assist in the management of complaints made by a person in relation to –

(i) the conduct of a property agent; and

(ii) the operation of a property agent's business.

3. Clients of property agents

For the purposes of this Code of Conduct –

(a) a client of a real estate agent is also a client of a property consultant, or of an assistant property manager, employed or engaged by the real estate agent; and

(b) a client of a property manager is also a client of an assistant property manager employed or engaged by the property manager.

4. Contravention of Act, regulations or Code

Without limiting what may constitute unsatisfactory professional conduct or professional misconduct, if a property agent contravenes a provision of the Act, the regulations or this Code of Conduct, that contravention may constitute unsatisfactory professional conduct or professional misconduct.

5. Attempt to do an act

If a property agent attempts to do an act which, if successfully completed, would constitute a contravention of a provision of the Act, the regulations or this Code of Conduct, that attempt may constitute unsatisfactory professional conduct or professional misconduct.

PART 2 - Supervision of Employees

6. Supervision of employees and persons engaged by property agent

A real estate agent, property manager, or general auctioneer, who is in effective or nominal control of an authorised place of business –

(a) is to diligently supervise the work of all other persons employed or engaged to work at the authorised place of business and is to ensure that they understand and comply with the Act, the regulations and this Code of Conduct; and

(b) while being permitted to delegate tasks to other persons employed or engaged to work at the authorised place of business, must not delegate the responsibility for any aspect of the work undertaken at that authorised place of business.

PART 3 - Duties to Clients and Customers

7. Dispute resolution

(1) A property agent must have in the property agent's authorised place of business a written document outlining –

(a) the manner in which a customer or a client may make a complaint against –

(i) the conduct of the property agent; or

(ii) the operation of the property agent's business; and

(b) the procedure that will be undertaken by the property agent to resolve the complaint.

(2) A property agent must provide a customer or client, who has made a complaint, or who wishes to make a complaint, against the property agent or the property agent's business, with a copy of the property agent's written document under subclause (1).

(3) A property agent must make all reasonable efforts to resolve a complaint –

(a) within a reasonable time; and

(b) in accordance with the procedure set out in the document referred to under subclause (1)(b).

8. Responsibility of property agent to client and customer

A property agent must at all times –

- (a)** accept that his or her first responsibility is to serve the interests of a client and, while serving the interests of the client, to act fairly, honestly and in a reasonable manner towards all other customers; and
- (b)** do everything that can be reasonably expected to obtain the best price and conditions for the sale or lease of a client's property or business; and
- (c)** when it is appropriate to do so, inform a customer that the property agent is acting for a client; and
- (d)** not behave in a manner that would suggest to a customer that the property agent is acting on behalf of the customer; and
- (e)** warn a customer, as soon as it is practicable to do so, that any information the customer discloses to the property agent may be disclosed to a client of the property agent as provided by clause 9.

9. Information disclosure

A property agent –

- (a)** must not disclose information relating to the affairs of a client obtained while acting for the client unless the client consents in writing to the disclosure or the property agent is required by law to make the disclosure; and
- (b)** must not use, in a manner prejudicial to a client's interests, information obtained while acting for the client unless the client consents in writing to the use; and
- (c)** must perform his or her duties to a client as diligently as possible and carry out a client's lawful instructions; and
- (d)** must exercise due skill, care and diligence when acting for a client; and
- (e)** must inform the client if, in his or her opinion, the price the client is prepared to accept on the listing of a property is less than the fair market value of the property; and
- (f)** must ascertain all pertinent facts in relation to a transaction undertaken for a client so as to avoid error, exaggeration or misrepresentation and, if any information about any matter in relation to the transaction, whether or not it is a fact, and which is unknown to the client, is ascertained, must disclose that information to the client as soon as practicable; and
- (g)** must not, in respect of any transaction undertaken for a client –
 - (i)** knowingly, by his or her conduct, convey to the client, or allow to be conveyed to the client, a false or misleading impression about any matter in relation to the transaction; or
 - (ii)** knowingly make to the client a statement or representation which is false or misleading; and

(h) must not engage in harsh or unconscionable conduct in the course of his or her dealings with a client or customer.

10. Acceptance of, or demand for, payment

A property agent –

(a) must not accept or demand payment from a person who is not a client of the property agent; or

(b) must not accept or demand, or negotiate or attempt to negotiate, payment for work undertaken or to be undertaken for a client that exceeds the amount agreed to between the property agent and client; or

(c) when a client is a purchaser or lessee, must not demand or attempt to negotiate any payment to the property agent from the vendor or lessor.

11. Advertising and marketing

(1) A property agent must not advertise or promote a property or business for sale or lease unless the property agent is advertising or promoting the property or business on the instructions of his or her client.

(2) A property agent –

(a) must not erect a sign on a property or business, other than the property or business being sold or leased by the property agent, if the erection of the sign has not been authorised by the owner of the property or business on which the sign is erected; or

(b) must not erect a sign on a property or business if the erection of that sign would contravene any applicable law, regulation, by-law or planning scheme; or

(c) must not publish, or cause to be published, an advertisement which indicates that a client has given the property agent authority for a property or business to be sold or leased at a higher or lower price than the price authorised by the client unless the client has consented to the higher or lower price in writing; or

(d) must not publish, or cause to be published, an advertisement which indicates that a property or business is for sale or lease unless the advertisement is authorised to be published, or caused to be published, by a client; or

(e) must not erect or display, or cause to be erected or displayed, a notice or sign, on a property or business, indicating that the property or business is for sale or lease unless the erection or display of the notice or sign is authorised by a client; or

(f) must, as soon as practicable, remove, or cause to be removed, any sign erected as authorised by an owner of a property or business under paragraph (a) if the owner of the property or business no longer authorises the erection of the sign on his or her property or business; or

(g) must, as soon as practicable, remove, or cause to be removed, any notice or sign erected or displayed under paragraph (e) if the client no longer authorises the erection or display of the notice or sign.

12. Conflicts of interest, rights and responsibilities

(1) A property agent must take all reasonable steps to ascertain whether or not a prospective client is the current client of another property agent for the sale or lease of a property or business.

(2) Subject to subclause (3), a property agent must not agree to act for a prospective client who the property agent knows, or should have known, is the client of another property agent for the sale or lease of a property or business.

(3) A property agent must obtain an acknowledgement in writing, from a person who is the client of another property agent for the sale or lease of a property or business, that the person may have to pay either or both of the following if the property or business is sold or leased:

(a) commission to each property agent;

(b) damages for breach of contract to the first-appointed property agent.

(4) Before a prospective client enters into a contract to become the client of a property agent, the property agent must clearly explain the prospective client's rights and responsibilities under that contract.

(5) A property agent –

(a) must not accept an appointment to act, or continue to act, for a client or prospective client where to do so would place the property agent's interests in conflict with the interests of the client or prospective client; or

(b) must not have as clients both vendor and purchaser, or both lessor and lessee, in respect of the same property or business.

(6) If a property agent has not obtained written permission from a client stating that the client will accept from the property agent oral notice that an offer to purchase the client's property or business has been made, the property agent must, as soon as practicable after an offer is made, inform the client, in writing, that an offer has been made to purchase the client's property or business by a person whose name is provided to the client by the property agent.

(7) If a property agent has obtained written permission from a client stating that the client will accept from the property agent oral notice that an offer to purchase the client's property or business has been made, the property agent must, as soon as practicable after an offer is made, inform the client, orally, that an offer has been made to purchase the client's property or business by a person whose name is provided to the client by the property agent.

(8) If a property agent is not going to present an offer to purchase a client's property or business to the client, the property agent must inform the person who made the offer that the offer will not be presented to the client.

(9) When a property agent presents a prospective purchaser's offer to a client, the property agent must, as soon as practicable, inform the prospective purchaser whether or not the client has accepted or rejected the offer.

(10) A property agent must not disclose, to a prospective purchaser of a property or business, particulars of any other offers that have been made by any other person to purchase the property or business.

13. Second commission

(1) A property agent who knows that another property agent has an agency agreement with a vendor must not introduce a customer to the vendor's property that is the subject of the agency agreement with the second-mentioned property agent without advising the vendor that, in the event of the sale of that property to that purchaser, the vendor may incur a second commission payable to the first-mentioned property agent.

(2) For the purposes of subclause (1) –

agency agreement has the same meaning as in section 18(10) of the Act;

introduce means, in the case of –

- (a) a residential property, the physical inspection of a residence with a prospective purchaser; or
- (b) a commercial property, the provision of documents to, or the commencement of discussions with, a prospective purchaser; or
- (c) vacant land, the bringing to the notice of a prospective purchaser the availability of the land for purchase.

PART 4 - Conduct

14. Records access and transfer

(1) This clause applies if a property agent –

- (a) is managing a property or business on behalf of a client; and
- (b) is advised by the client that another property agent is, or will be, managing the property or business for the client.

(2) If a new property agent is engaged by a client to manage the client's property or business, the current property agent must ensure that all records relating to the management of the property or business by the property agent are shared with the new property agent to facilitate the transfer of the management of the property or business to the new property agent.

15. Conduct detrimental to property agents industry

A property agent must not act in any way that is, or may be, detrimental to the reputation or interests of the property agents industry.

16. Unsatisfactory professional conduct

Examples of behaviour that might constitute unsatisfactory professional conduct include, but are not limited to –

- (a) a property agent unreasonably delaying the completion of work for a client; and
- (b) a property agent failing to act in the best interests of a client, unless it is unlawful to do so; and

(c) a property agent marketing, or advertising for sale, purchase, exchange or lease, a property or business at a price or on terms different from the price or terms authorised by the client; and

(d) a property agent offering to sell, purchase, exchange or lease on behalf of a client a property or business at a price or on terms different from the price or terms authorised by the client; and

(e) a property agent failing to keep a client informed of any significant development or issue in relation to a property or business; and

(f) a property agent engaging in high-pressure tactics or harassment whilst working in the property agents industry; and

(g) a property agent failing to keep himself or herself informed and up-to-date about the Act, the regulations, this Code of Conduct and any other legislation which affects the property agents industry.

17. Professional misconduct

Examples of behaviour that might constitute professional misconduct include, but are not limited to –

(a) a property agent seriously neglecting or excessively delaying the completion of work for a client; and

(b) a property agent charging fees or costs which are, in the circumstances, substantially excessive; and

(c) a property agent consistently or substantially failing to reach reasonable standards of competence and diligence; and

(d) a property agent grossly contravening his or her fiduciary obligations as a property agent; and

(e) a property agent failing to act honestly, or acting fraudulently; and

(f) a property agent consistently contravening the Act, the regulations or this Code of Conduct.

18. Misleading conduct, harassment or unconscionable conduct

Examples of behaviour that might constitute misleading conduct, harassment or unconscionable conduct include, but are not limited to –

(a) a property agent misrepresenting a prospective buyer's intention to a client in order to have the client renew his or her contractual relationship with the property agent; and

(b) a property agent using, or allowing others to use, threatening or intimidating language or behaviour towards a client or customer; and

(c) a property agent putting unreasonable pressure on a client or customer to compel the client or customer to comply with the property agent's demands or request; and

- (d)** a property agent taking unfair advantage of a customer or client's lack of knowledge about the property agents industry; and
- (e)** a property agent taking unfair advantage of a customer or client's lack of understanding of a situation or document; and
- (f)** a property agent exerting undue influence or pressure on, or using unfair tactics against, a client or customer; and
- (g)** a property agent giving a prospective client an overestimate of the likely selling price of the prospective client's property or business.

Note: For further information please refer to the Guide to the Code of Conduct published by the Board and available on its website at www.propertyagentsboard.com.au