



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

ESTATE AGENTS REGULATIONS
PROFESSIONAL CONDUCT

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$100 billion of transactions totalling 30 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak industry association for the real estate industry in Victoria, representing a significant number of the state's licensed estate agents and agent's representatives.

This review of the Estate Agents (Professional Conduct) Regulations 2008 is of significant importance to our members as it will impact on their interactions with clients and the public.

In forming our response, the REIV has consulted with members through our Chapter Committees dedicated to all real estate specialisations.

REIV Response

The following outcomes were gained from the member consultation process.

Operation of Regulations

Feedback from REIV members indicates the existing professional conduct regulations are generally working well. Nonetheless, the removal of unnecessary duplications will greatly improve the operation of the 2018 Regulations.

The inclusion of Part 4 – Conduct of Agent's Representatives - has resulted in unnecessary duplication, which had previously been avoided by the inclusion of a definition of 'agent'. The 1997 definition stated that 'agent' means an estate agent or agent's representative.

This unnecessary duplication was largely responsible for four pages being added to the current Regulations.

In drafting the 2018 regulations, the REIV strongly recommends that unnecessary duplication is avoided by adopting the definition of "agent" from the 1997 Regulations.

Disputes between agents

The REIV also urges Consumer Affairs Victoria (CAV) to restore the 1997 Regulation which obliged agents to minimise disputes between themselves and to resolve disputes speedily and fairly, if they arose.

For some unexplained reason, Regulation 23 was omitted from the current Regulations.

Soliciting listings

Soliciting listings is another issue that the REIV would like to see addressed in the drafting of the 2018 Regulations.

The current Regulations prohibit inducing a breach of contract, however they do not directly refer to soliciting listings as provided by the 1997 Regulations.

While the prohibition in the current Regulations covers both activities, soliciting is an attempt to induce a breach of contract. This is a constant issue in the real estate industry and is the cause of many complaints.

Given soliciting has a special connotation within the real estate industry, the wording of the current prohibition does not capture it.

The Institute recommends that either the individual prohibitions in the 1997 Regulations are restored (Regulations 20 and 21) or the prohibition in the current Regulations is revised to refer specifically to soliciting. Regulation 21 from the 1997 Regulations stipulated that 'An agent must not solicit a listing of any real estate or business from an owner where the agent is aware that another agent is engaged by the owner under a sole or exclusive agency engagement or appointment to sell or let the real estate or business.'

Offers & bids

Feedback from REIV members indicates the last line of Regulation 13 (5) should be amended to include the seller's conveyancer or legal practitioner. The REIV suggests the following wording, 'immediately inform the seller and seller's conveyancer or legal practitioner of this fact.'

The REIV also considers it imperative that Regulation 16 'communication of offers by estate agent' be amended to remove reference to verbal offers. The REIV strongly believes that all offers must be obtained in writing to ensure best practice.

Regulation 17 'bids and offers at public auctions of land' should also clarify that it specifically relates to late bids or offers.

Property management

As outlined in our response to Option 14 of the Estate Agents & Conveyancers Options Paper, the REIV does not support the introduction of specific professional conduct rules relating to property management.

The Australian Consumer Law already provides existing safeguards for consumers of property management services, including consumer guarantees that cannot be

excluded by contract.

Role responsibilities

The REIV also considers it essential that the wording of the 2018 Regulations be amended to clarify the roles of estate agents and agent's representatives.

The existing wording confuses the roles of estate agents and agent's representatives, as it assumes an agent's representative is engaged by a principal. That is not the case. It is the estate agent who is engaged by the principal.

The roles and responsibilities of agents and agent's representatives are fundamentally different and it is crucial that this difference is taken into consideration when drafting the 2018 Regulations.

The communication of offers is one instance where this confusion arises. Regulation 16 obliges an agent to communicate offers to a principal as soon as possible after being made. Regulation 24 obliges an agent's representative to do likewise. The dual obligation creates uncertainty because it fails to take into account good estate agency practice. Good estate agency practice dictates that on an agent's representative receiving an offer it will be referred to the representative's superior, the estate agent, who will, in turn, direct the manner of its referral to the agency's principal in accordance with the 2008 Regulations, or the principal's written instructions.

Summary

As a long-term advocate of real estate agents in Victoria, the REIV thanks Consumer Affairs Victoria (CAV) for the opportunity to provide input to the review of the Estate Agents (Professional Conduct) Regulations 2008.

We look forward to liaising with Government as draft regulations are prepared.

CONTACT US

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