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# Code of Conduct

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## CODE OF CONDUCT FOR MEMBERS – NOVEMBER 2005

### SECTION 1 – Code Objectives

- 1.1 This is the model national code of conduct of the Real Estate Institute of Australia ("REIA") as recommended for adoption and implementation by its affiliated bodies and is a public statement of the principles, values and behaviour expected of members of those affiliated bodies.
- 1.2 The objective of this code of conduct is to promote and encourage a high standard of ethical practice by members and their employees in their dealings with other members, other agents, their employees and members of the public.
- 1.3 By following this code a member will not engage in conduct that is: contrary to good estate agency practice; or detrimental to the reputation or interests of the profession, the Institute or its members.

### SECTION 2 – Professional Standards

- 2.1 In this Code –  
*'Agent'* means a licensed real estate agent, strata managing agent, stock and station agent, business agent or valuer;  
*'Affiliated bodies'* means and includes the following:  
The Real Estate Institute of Queensland  
The Real Estate Institute of New South Wales  
The Real Estate Institute of South Australia Inc.  
The Real Estate Institute of Western Australian Inc.  
The Real Estate Institute of Tasmania  
The Real Estate Institute of Victoria Ltd.  
The Real Estate Institute of the Australian Capital Territory Ltd.  
The Real Estate Institute of Northern Territory Inc;  
*'Client'* means a person who retains a member to represent their interests in a real estate transaction;  
*'Customer'* means a person who transacts business with a member but does not retain their services;  
*'Employee'* means a sales person, sales representative, agent's representative, property manager, body corporate manager or any other person in the employ of, or acting on behalf of, a member;  
*'Fee'* includes commission, charges, or other remuneration whether monetary or otherwise;  
*'Institute'* means any affiliated body;  
*'Member'* means any member of an affiliated body, and includes any employee of a member; and  
*'Estate agents legislation'* means legislation in the States and Territories regulating real estate agents, strata managing agents, stock and station agents, business agents and valuers.

#### Duties and Obligations

- 2.2 A member must have a working knowledge of agency law which sets out the duties and obligations of an agent towards the client.

#### Knowledge of the Law

- 2.3 A member must have a working knowledge of:
  - (a) estate agents legislation and any regulations made under such legislation; and
  - (b) other statutes and any rules or regulations in force such as fair trading and trade practices legislation to the extent that they are relevant to the conduct of the real estate profession.

#### Compliance with Legislation

- 2.4 A member must not, in the conduct of estate agency, contravene or fail to comply with any statute, rule or regulation in force to the extent that it is relevant to the conduct of the real estate profession.

#### Good Real Estate Agency Practice

- 2.5
  - (a) A member must exercise skill, care, and diligence in the conduct of the profession.
  - (b) A member must complete all work on behalf of the client as soon as is reasonably possible.
- 2.5.1 A member must act in the best interests of the client except where it

would be unreasonable or improper to do so.

- 2.5.2 A member must not induce or attempt to induce a breach of or an interference with a contract or arrangement of sale, letting, or agency.
- 2.5.3 A member must not solicit or accept an agency if the member is aware that any other agency is in force which may obligate the client to pay two fees or expose the client to a claim for damages for breach of contract in the event of a sale taking place.
- 2.5.4 A member may act in conjunction with another member if so authorised by a client.

#### Authorities and Instructions

- 2.6 A member must not act as agent or represent himself or herself as acting as agent on behalf of a person without authority
- 2.6.1 A member must act in accordance with the instructions of a client except where to do so would be unlawful or contrary to good agency practice.
- 2.6.2 An agent must not:
  - (a) advertise or offer for sale or lease any real estate or business at a price or on terms different from that authorised by the client; or
  - (b) advertise or offer to purchase or lease on behalf of a client any real estate or business on terms different from that authorised by the client.
- 2.6.3 The price at which a member offers a property shall be in accordance with the instructions of the client. However, if the member considers that the price asked by a client is more or less than fair market value, the member shall advise the client accordingly.

#### Fair Conduct

- 2.7 A member must act fairly and honestly and to the best of his or her knowledge and ability with all parties in a transaction.
- 2.7.1 A member must not mislead or deceive any parties in negotiations or a transaction.
- 2.7.2 A member must not engage in harsh or unconscionable conduct.

#### Supervision of Employees

- 2.8 A member or the person in effective or nominal control of the agency must properly supervise the agency business and take reasonable steps to ensure that employees of the agency comply with the provisions of estate agents' legislation, this code of conduct and other relevant statutes, rules and regulations where applicable to them.
- 2.8.1 If an employee fails to comply with the provisions of estate agents' legislation, this code of conduct or other relevant statutes, rules or regulations where applicable then, for the purposes of section 2.9.1 of this Code, the member or the person in effective or nominal control of the agency business shall have the onus of proving that he or she complied with the requirements of that section.

#### Verifying Information

- 2.9 Prior to the execution by the client of any contract relating to the sale or lease of any real estate or business, the member must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent member would have ascertained in order that the member may avoid error, exaggeration or misrepresentation.
- 2.9.1 It is the duty of a member to act in a professional manner and to ascertain all available pertinent facts concerning the property for which the member accepts the agency so that in providing the service the member may avoid error, exaggeration or misrepresentation.
- 2.9.2 When a member receives instructions to offer real estate for sale the member shall take all reasonable steps to verify the ownership of the property and the property description.

#### Advice as to Market Price

- 2.10 A member engaged to sell, purchase or lease any real estate or business must advise the client as to what the member considers to be the current market price of that real estate or business.
  - 2.10.1 When asked for advice concerning real estate, a member must never offer an unconsidered opinion. A member's counsel constitutes a professional service which a member should not render prior to conducting a full and proper investigation of all the relevant facts and circumstances. A member may, by prior arrangement with a client, make an appropriate professional charge for such advice.
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# Code of Conduct

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## Best Interests of the Client

- 2.11 A member must not accept an engagement to act, or continue to act, where to do so would place the member's interest in conflict with that of the client.

## Confidential Information

- 2.12 A member must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, except for information that an agent is required by law to disclose.
- 2.12.1 A member must communicate all offers to the client as soon as practicable.

## Commissions and Expenses

- 2.13 A member must not accept or demand any commission from any person, other than the client, in respect of any service performed or to be performed by the member, being a service in respect of which the member receives commission or is entitled to receive commission from the client.
- 2.13.1 A member must not demand, retain or receive a discount or rebate which relates to a service by a stocktaker or tradesperson, or to advertising, in connection with a transaction or a service provided by the member unless the member has obtained the written consent of the client to the seeking or retaining of the discount or rebate by the member.
- 2.13.2 A member must not demand, retain or receive a commission for a service or transaction which is: greater than any prescribed maximum commission; or greater than the amount agreed with the client.
- 2.13.3 If a member is entitled to seek reimbursement from a client of any expense which the member has incurred, the member shall promptly supply to the client all relevant information and material which the client may reasonably require as to the amount of the expense, and to be satisfied that the expense was properly incurred by the member.
- 2.13.4 A member shall not seek or retain reimbursement of an expense which the member has incurred in respect of advertising, signboards, printed material, and promotions unless:
- the client has agreed in writing to pay the expense; and
  - the agreement specifies a maximum amount which the member may seek or retain by way of reimbursement.

## Tenancy

- 2.14 A member must immediately notify the owner when the member becomes aware of a significant breach or repeated breaches of the tenancy agreement.
- 2.14.1 A member managing a rental property must fully complete an inventory and inspection reports and provide such reports to the owner in accordance with the terms of the property management agreement.

## Notifying Managing Agents

- 2.15 If a member accepts an engagement to sell any real estate and is or becomes aware that another member is the managing agent of that real estate, the member must immediately give written notice of the appointment to the managing agent, unless otherwise instructed, in writing, by the client.

## Fraud and Misrepresentation

- 2.16 It is the duty of every member to protect the public against fraud, misrepresentation or unethical practices in connection with real estate transactions.

## Member's Responsibility

- 2.17 No instructions or inducements from any client or customer will relieve a member from the responsibility of strictly observing this code of conduct.

## Disputes

- 2.18 A member must make every effort to minimise disputes with other members, agents, and members of the public and to resolve complaints or disputes that do arise as expeditiously and as fairly as possible. It shall be a breach of this Code for a member, in dispute with a fellow member in relation to this Code, to resort to action at law before submitting the matter to their Institute for adjudication in the first instance.

## Member's Employee Representations

- 2.19 An employee of a member must not intentionally represent himself or herself as the holder of a real estate agent's licence; or the person in effective control of the estate agency business or a corporation that is the holder of a real estate agent's licence.

## SECTION 3 – COMPLAINT HANDLING AND APPEALS

### \*(Does not apply in Victoria)

Arising from sub-section 2.18 of this code in relation to complaints or disputes, this section sets out the principles of a complaint handling and appeals process which shall make adequate provision for:

- Consumer access to the process
  - Appeals to an independent arbitrator
  - The making of decisions in accordance with the principles of procedural fairness; and
  - Annual reporting to members and the public on the operation and effectiveness of the process.
- 3 Each affiliate member of the REIA shall establish a committee to deal with arbitration and professional standards. The membership of such committee shall be drawn from the members of each affiliate body.
- 3.1 The board of directors of each affiliate body shall appoint a number of the members of such arbitration and professional standards committees to act as chairpersons of the hearing panels of such committees. A member of the board of directors shall be responsible for the oversight of the work of the arbitration and professional standards committees but shall not be a member of any hearing panel constituted by such committees.
- 3.2 All complaints or disputes shall first be submitted to an assessment committee for initial determination as to whether the complaint shall be pursued, referred to mediation or referred to a hearing panel for determination.
- 3.3 When a member is alleged to have breached this code of conduct, he or she must place all pertinent facts before the relevant arbitration and professional standards committee.

## SECTION 4 – Code Monitoring

- 4 The Real Estate Institute of Australia has established the Real Estate Agents' Code Committee (the "Committee") to monitor, on a national basis, the implementation of the model Code of Conduct for Real Estate Agents (the "Code").
- 4.1 The Committee is comprised of a chairperson, being the President of the REIA or his or her nominee; the President of each of the State and Territory Real Estate Institutes or their nominees; and one public representative;
- 4.2 The Committee meets on a six monthly basis, or more frequently as required by circumstances.
- 4.3 The role of the Committee is to:
- review and amend the terms of the Code from time to time;
  - promote the aims and objectives of the Code and seek compliance of the Code by members;
  - review and monitor the overall effect and performance of the Code;
  - monitor any performance standards developed by affiliated bodies which relate to this Code; and
  - report annually as to the overall administration and operation of the Code.

## SECTION 5 – Code Review

- 5 Three years after the commencement of the Code and on a triennial basis, the REIA shall arrange an independent evaluation of its performance and effectiveness in relation to:
- benefits;
  - cost;
  - visibility to the public;
  - industry awareness; and
  - complaint handling.
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**\*The following section 3 applies in Victoria in substitute for the REIA Section 3.**

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Arising from sub-section 2.18 of this code in relation to complaints or disputes, this section sets out the principles of a complaint handling and appeals process which shall make adequate provision for:

1. Member access to the process
  2. Mediation
  3. Hearings
  4. Appeals to an independent arbitrator
  5. The making of decisions in accordance with the principles of procedural fairness; and
  6. Annual reporting to members on the operation and effectiveness of the process.
- 3 Each affiliate member of the REIA shall establish a committee to deal with arbitration and professional standards. The membership of such committee shall be drawn from the members of each affiliate body.

- 3.1 The board of directors of each affiliate body shall appoint a Chairperson of Chairpersons and number of the members of such arbitration and professional standards committees to act as chairpersons of the hearing panels of such committees. A member of the board of directors shall be responsible for the oversight of the work of the arbitration and professional standards committees but shall not be a member of any hearing panel constituted by such committees.
- 3.2 All complaints or disputes shall first be submitted to an Arbitration Co-ordinator appointed by Chief Executive Officer of the affiliate body who in consultation with the Chairperson of Chairpersons, will determine whether the complaint shall be pursued or referred to mediation.
- 3.3 When a member is alleged to have breached this code of conduct, he or she must place all pertinent facts before the relevant arbitration and professional standards committee.