

Authorised Version No. 003
Estate Agents (Professional Conduct)
Regulations 2008

S.R. No. 46/2008

Authorised Version as at
13 March 2013

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PART 1—INTRODUCTORY

1 Objective

The objective of these Regulations is to prescribe rules of professional conduct for estate agents and agents' representatives.

2 Authorising provisions

These Regulations are made under section 99 of the **Estate Agents Act 1980**.

3 Commencement

- (1) These Regulations, except for regulations 17 and 25, come into operation on the day on which they are made.
- (2) Regulations 17 and 25 come into operation on 30 June 2008.

4 Revocation

The Estate Agents (Professional Conduct) Regulations 1997¹ are **revoked**.

5 Definitions

In these Regulations—

estate agency practice means the business of—

- (a) selling buying exchanging letting or taking on lease of or otherwise dealing with or disposing of;

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(b) negotiating for the sale purchase exchange letting or taking on lease of or any other dealing with or disposition of;

(c) collecting rent for—
any real estate or business on behalf of any other person;

principal means—

(a) in relation to an estate agent, the person who engages the services of the estate agent to act on the person's behalf;

(b) in relation to an agent's representative, the person who engages the services of the estate agent, for whom the agent's representative is performing the functions of an estate agent, to act on the person's behalf;

the Act means the **Estate Agents Act 1980**.

**PART 2—GENERAL CONDUCT OF ESTATE AGENTS AND
AGENTS' REPRESENTATIVES**

6 Knowledge of the law

An estate agent and an agent's representative must have a working knowledge of—

- (a) the Act and any regulations made under the Act; and
- (b) any other laws relevant to the functions performed by the estate agent and agent's representative.

7 Confidential information

An estate agent and an agent's representative must not at any time use or disclose any confidential information obtained while acting on behalf of a principal, unless authorised by the principal or required by law to do so.

8 Dispute resolution

- (1) An estate agent must have in place procedures for resolving complaints and disputes arising from the operation of the agent's estate agency practice.
- (2) An estate agent must advise a person that the estate agent has procedures for resolving complaints and disputes—
 - (a) before obtaining a signed written engagement or appointment from the person; or
 - (b) as soon as possible after obtaining the engagement or appointment.
- (3) An agent's representative must advise a person that the licensed estate agent (for whom the agent's representative is performing the functions of an estate agent) has procedures for resolving complaints and disputes—

- (a) before a signed written engagement or appointment is obtained from the person; or
 - (b) as soon as possible after the engagement or appointment is obtained.
- (4) If a person makes a complaint to an estate agent about the estate agent or any person acting on behalf of the estate agent (including an agent's representative), the estate agent must inform the person of the estate agent's procedures for resolving complaints and disputes as soon as possible after the complaint is made.
- (5) An estate agent must make every effort to minimise and resolve disputes with a principal that relate to the performance of the estate agent's functions.
- (6) If a person makes a complaint to an agent's representative about the agent's representative or the licensed estate agent for whom the agent's representative is performing the functions of an estate agent, the agent's representative must inform the person of the licensed estate agent's procedures for resolving complaints and disputes as soon as possible after the complaint is made.
- (7) An agent's representative must make every effort to minimise and resolve disputes with a principal that relate to the performance of the agent's representative's functions.

9 Commissions

- (1) An estate agent or an agent's representative must not—
- (a) accept commission from the seller of real estate or a business when engaged to purchase that real estate or business on behalf of a purchaser; or

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- (b) accept commission from the purchaser of real estate or a business when engaged to sell that real estate or business on behalf of the seller; or
 - (c) accept commission from a landlord when engaged by a person to obtain a tenancy of the landlord's real estate or business on behalf of that person; or
 - (d) accept commission from a person who wishes to obtain a tenancy agreement when engaged to obtain a tenancy for the real estate or a business on behalf of the landlord of the real estate or business.
- (2) An estate agent must not induce or attempt to induce a person to enter into a contract or agreement with the agent that could make the person liable to pay commission to more than one estate agent in relation to the sale or lease of any real estate or business, without giving clear written advice to the person of the potential liability to pay more than one commission.
- (3) An agent's representative must not induce or attempt to induce a person to enter into a contract or agreement with the licensed estate agent for whom the agent's representative is performing the functions of an estate agent, that could make the person liable to pay commission to more than one estate agent in relation to the sale or lease of any real estate or business, without giving clear written advice to the person of the potential liability to pay more than one commission.
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PART 3—CONDUCT OF ESTATE AGENTS

10 Estate agent's instructions

An estate agent must act in accordance with the lawful instructions of a principal, except where to do so would be contrary to good conduct as an estate agent.

11 Fairness and honesty of estate agent

An estate agent must at all times act fairly and honestly and to the best of the agent's knowledge and ability in the performance of the agent's functions as an estate agent.

12 Potential conflict of interest of estate agent

- (1) An estate agent must always act in a principal's best interests except where it would be unlawful, unreasonable, improper or contrary to the principal's instructions to do so.
- (2) An estate agent must not accept an engagement from, or act for, a person where to do so would place the agent's interests in conflict with that of the person.
- (3) If an estate agent recommends a supplier of goods and services to a principal the agent must disclose to the principal any personal or commercial relationship between the estate agent or the agent's representative and the supplier of the goods and services.

13 Good practice of estate agents

- (1) An estate agent must exercise all due skill, care and diligence in performing the agent's functions as an estate agent.
- (2) An estate agent must not engage in conduct that is unprofessional or detrimental to the reputation or interests of the estate agency industry.

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- (3) An estate agent must complete all work on behalf of a principal as soon as is reasonably possible.
 - (4) Unless a landlord otherwise instructs in writing, if an estate agent is managing a rental property on behalf of a landlord, the estate agent must promptly notify the landlord of any breach of a tenancy agreement.
 - (5) If an estate agent is acting for the seller of real estate or a business and a contract of sale for the real estate or business has been entered into and, contrary to the terms of the contract, a deposit has not been received, the estate agent must immediately inform the seller of this fact.

14 Estate agent not to induce breach of contract

An estate agent must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency or a contract of any other kind relating to the estate agency practice.

15 Estate agent to ascertain information

An estate agent must make all reasonable enquiries to ascertain the information relevant to a service or transaction relating to the estate agency practice to be provided or performed by the estate agent.

16 Communication of offers by estate agent

Unless otherwise instructed in writing by a principal, an estate agent must communicate to the principal all offers to purchase, sell or lease real estate or a business, made to the estate agent, whether those offers were made verbally or in writing, as soon as possible after the offer has been made.

17 Bids and offers at public auctions of land

Despite regulation 16, an estate agent must not communicate to any person any bid or offer for a property that is made after the property has been knocked down to the successful bidder at a public auction for the sale of land, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.

PART 4—CONDUCT OF AGENTS' REPRESENTATIVES

18 Agent's representative's instructions

An agent's representative must act in accordance with the lawful instructions of a principal, except where to do so would be contrary to good conduct as an agent's representative.

19 Fairness and honesty of agent's representative

An agent's representative must at all times act fairly and honestly and to the best of his or her knowledge and ability in the performance of his or her functions as an agent's representative.

20 Potential conflict of interest of agent's representative

- (1) An agent's representative must always act in a principal's best interests except where it would be unlawful, unreasonable, improper or contrary to his or her principal's instructions to do so.
- (2) An agent's representative must not act for a principal where to do so would place his or her interests in conflict with that of that principal.
- (3) If an agent's representative recommends a supplier of goods and services to a principal, the agent's representative must disclose to the principal any personal or commercial relationship between the agent's representative, the licensed estate agent (for whom the agent's representative is performing the functions of an estate agent) and the supplier of goods and services.

21 Good practice of agents' representatives

- (1) An agent's representative must exercise all due skill, care and diligence in performing his or her functions as agent's representative.
- (2) An agent's representative must not engage in conduct that is unprofessional or detrimental to

the reputation or interests of the estate agency industry.

- (3) An agent's representative must complete all work on behalf of a principal as soon as is reasonably possible.
- (4) Unless a landlord otherwise instructs in writing, an agent's representative who is acting for or on behalf of a licensed estate agent managing a rental property, must promptly notify the landlord of the property of any breach of a tenancy agreement in relation to the property.
- (5) If the principal of an agent's representative is the seller of real estate or a business, and a contract of sale for the real estate or business has been entered into and, contrary to the terms of the contract, a deposit has not been received, the agent's representative must immediately inform the seller of this fact.

22 Agent's representative not to induce breach of contract

An agent's representative must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency or a contract of any other kind relating to the estate agency practice.

23 Agent's representative to ascertain information

An agent's representative must make all reasonable enquiries to ascertain the information relevant to a service or transaction relating to the estate agency practice to be provided or performed by the agent's representative.

24 Communication of offers by agent's representative

Unless otherwise instructed in writing by his or her principal, an agent's representative must communicate to the principal all offers to purchase, sell or lease real estate or a business, made to the agent's representative, whether those offers were made verbally or in writing, as soon as possible after the offer has been made.

25 Bids and offers at public auctions of land

Despite regulation 24, an agent's representative must not communicate to any person any bid or offer for a property that is made after the property has been knocked down to the successful bidder at a public auction for the sale of land, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.

ENDNOTES

1. General Information

The Estate Agents (Professional Conduct) Regulations 2008, S.R. No. 46/2008 were made on 27 May 2008 by the Governor in Council under section 99 of the **Estate Agents Act 1980**, No. 9428/1980 and came into operation as follows:

Regulations 1–6, 18–24 on 27 May 2008: regulation 3(1); regulations 17 and 25 on 30 June 2008: regulation 3(2).

The Estate Agents (Professional Conduct) Regulations 2008 will sunset 10 years after the day of making on 27 May 2018 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Estate Agents (Professional Conduct) Regulations 2008 by statutory rules, subordinate instruments and Acts.

Endnotes

3. Explanatory Details

¹ Reg. 4: S.R. No. 50/1997.