



Queensland

*Property Agents and Motor Dealers Act 2000*

# **Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001**

**Reprinted as in force on 7 September 2001**

**Reprint No. 1<sup>\*</sup>**

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This regulation is reprinted as at 7 September 2001.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

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Queensland

# Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001

## Contents

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		Page
1	Short title . . . . .	5
2	Commencement . . . . .	5
3	Code of conduct . . . . .	5
<b>Schedule</b>	<b>Real Estate Agency Practice Code of Conduct . . . . .</b>	<b>6</b>
<b>Part 1</b>	<b>Preliminary</b>	
1	Title . . . . .	6
2	Object . . . . .	6
3	Definitions . . . . .	6
4	Compliance with code . . . . .	7
<b>Part 2</b>	<b>General rules of conduct</b>	
5	Knowledge of Act and code . . . . .	7
6	Fiduciary obligations . . . . .	7
7	Honesty, fairness and professionalism . . . . .	8
8	Skill, care and diligence . . . . .	8
9	Agent to act in client's best interests . . . . .	8
10	Agent to act in accordance with client's instructions . . . . .	8
11	Agent to keep client informed of developments . . . . .	9
12	Agent to ensure employees comply with Act and code . . . . .	9
13	Representations by employees . . . . .	9
14	Fraudulent or misleading conduct . . . . .	10
15	High pressure tactics, harassment or unconscionable conduct . . . . .	10
16	Claiming membership or endorsement . . . . .	11
17	Conflict of duty or interest . . . . .	11
18	Soliciting through false or misleading advertisements or communications . . . . .	11

*Property Agents and Motor Dealers (Real Estate  
Agency Practice Code of Conduct) Regulation 2001*

---

<b>Part 3</b>	<b>Rules specific to real estate agents</b>	
<b>Division 1</b>	<b>General</b>	
19	Prior appointment of another agent or auctioneer . . . . .	12
20	Conjunction sales . . . . .	13
21	Advice about market price or rent . . . . .	13
22	Finding out or verifying ownership and property description . . . .	14
23	Finding out or verifying material facts. . . . .	14
24	Agent to encourage disclosure by client. . . . .	14
25	Disclosure to customer that agent is the client's agent . . . . .	14
26	Referral to service provider . . . . .	15
27	Goods and services . . . . .	16
28	Inducing breach of contract . . . . .	16
29	Duty to obtain maximum sale price . . . . .	16
30	Opportunity to obtain independent advice or representation . . . .	16
31	Failure to receive deposit . . . . .	17
<b>Division 2</b>	<b>Property management</b>	
32	Inspection report and inventory . . . . .	17
33	Inspection of property for rent . . . . .	17
34	Maintenance or repairs of rental property . . . . .	18
35	Agent not to engage unlicensed person for building work . . . . .	18
36	Breach of agreement or contract . . . . .	18
37	Notifying managing agent of appointment to sell . . . . .	19
38	Notifying customer of appointment to sell . . . . .	19
39	Final inspection of rental property . . . . .	19
<b>Division 3</b>	<b>Use, disclosure and recording of information</b>	
40	Confidentiality. . . . .	20
41	Recording of information . . . . .	21
<b>Part 4</b>	<b>Publicising code</b>	
42	Publicity about code . . . . .	22
<b>Part 5</b>	<b>Complaint resolution</b>	
43	Principal licensee to have complaint handling procedure. . . . .	22
44	Client to be notified of complaint and outcome . . . . .	24
45	Compliance with complaint handling procedure. . . . .	24

*Property Agents and Motor Dealers (Real Estate  
Agency Practice Code of Conduct) Regulation 2001*

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**Endnotes**

1	Index to endnotes . . . . .	25
2	Date to which amendments incorporated . . . . .	25
3	Key . . . . .	25
4	Table of reprints . . . . .	26
5	List of legislation . . . . .	26



# **Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001**

[reprinted as in force on 7 September 2001]

## **1 Short title**

This regulation may be cited as the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001*.

## **2 Commencement**

This regulation commences on 1 August 2001.

## **3 Code of conduct**

The code of conduct in the schedule is the code of conduct about real estate agency practice prescribed for the Act, section 154.<sup>1</sup>

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<sup>1</sup> Act, section 154 (Code of conduct)

## **Schedule                      Real Estate Agency Practice Code of Conduct**

section 3

### **Part 1                      Preliminary**

#### **1                      Title**

This code of conduct may be cited as the *Real Estate Agency Practice Code of Conduct*.

#### **2                      Object**

- (1) The object of this code is to increase the accountability of real estate agents for their actions in carrying on the business of a real estate agent.
- (2) The object is achieved by—
  - (a) setting conduct standards for real estate agents; and
  - (b) establishing principles for fair trading in real estate agency practice; and
  - (c) providing for a system of complaint resolution for complaints about real estate agency practice.

#### **3                      Definitions**

In this code—

***client*** means a person who appoints a real estate agent to perform an activity mentioned in the Act, section 128(1).<sup>2</sup>

***customer*** means a person with whom a real estate agent deals on behalf of a client.

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<sup>2</sup> Act, section 128 (What a real estate agent's licence authorises)



### Schedule (continued)

**holiday purposes** has the meaning given by the *Residential Tenancies Act 1994*, section 21.<sup>3</sup>

**lease** includes a rental agreement.

**real estate agent** includes an employed licensee and a real estate salesperson.

#### **4 Compliance with code**

- (1) This code contains provisions with which a real estate agent must comply.<sup>4</sup>
- (2) This code overrides an instruction or request that does not comply with the code from a client or, if the real estate agent is an employee, from the agent's employer.

## **Part 2 General rules of conduct**

#### **5 Knowledge of Act and code**

A real estate agent must have a reasonable knowledge and understanding of the Act and this code.

#### **6 Fiduciary obligations**

A real estate agent must comply with a fiduciary obligation incurred as a real estate agent.

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3 *Residential Tenancies Act 1994*, section 21 (Premises used for holidays)

4 Contravention of this code is a ground for—

- starting disciplinary proceedings under the Act, section 496
- obtaining an injunction under the Act, section 565
- seeking an undertaking under the Act, section 569.

### Schedule (continued)

#### **7 Honesty, fairness and professionalism**

- (1) A real estate agent must act honestly, fairly and professionally in the conduct of a real estate agency practice.
- (2) Without limiting subsection (1), a real estate agent must treat a customer honestly and fairly.

#### **8 Skill, care and diligence**

- (1) A real estate agent must exercise reasonable skill, care and diligence in the conduct of a real estate agency practice.
- (2) A real estate agent must complete all work for a client as soon as is reasonably practicable.

#### **9 Agent to act in client's best interests**

A real estate agent must act in a client's best interests unless it is unlawful or unreasonable to do so.

#### **10 Agent to act in accordance with client's instructions**

- (1) A real estate agent must act in accordance with a client's instructions unless it is contrary to this code or otherwise unlawful to do so.

*Examples—*

- 1 A real estate agent must not market, or advertise for sale, purchase, exchange or lease, property at a price, or on terms, different from the terms authorised by the client.
  - 2 A real estate agent must not offer to sell, purchase, exchange or lease on behalf of a client a property on terms different from the terms authorised by the client.
- (2) However, the price at which a real estate agent offers to sell or buy property must be in accordance with the client's written instructions.

## Schedule (continued)

### **11 Agent to keep client informed of developments**

- (1) A real estate agent appointed to sell, buy, exchange or lease property for a client must keep the client informed of any significant development or issue in relation to the property.
- (2) Without limiting subsection (1), a real estate agent must immediately communicate to the client each expression of interest, whether written or oral, about the sale, purchase, exchange or lease of the property.
- (3) However, subsection (2) does not apply if the client has directed otherwise in writing.

### **12 Agent to ensure employees comply with Act and code**

- (1) A real estate agent who is a principal licensee must take reasonable steps to ensure a registered employee of the agent complies with the Act and this code in relation to the agent's business.

*Example—*

A real estate agent in whose business the supervisor to employee ratio is so low that supervisors can have little knowledge of what staff are doing or how they are performing their work may need to employ more supervisors.

- (2) A real estate agent who is an employed licensee in charge of a real estate agent's business at a place of business must take reasonable steps to ensure a registered employee at the place complies with the Act and this code in relation to the business.
- (3) This section applies only to the extent that the Act, section 129<sup>5</sup> does not already require a real estate agent to take the steps mentioned in the section.

### **13 Representations by employees**

A real estate agent must take reasonable steps to ensure that an employee of the agent—

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5 Act, section 129 (Responsibility for acts and omissions of salespersons)

### Schedule (continued)

- (a) does not falsely represent that the employee is the holder of a licence in relation to real estate agency, or falsely use a title that suggests the employee is the holder of a licence; or
- (b) whether licensed under the Act or not, does not represent that the employee is the person in effective control of the agent's business, or use a title that suggests the employee is the person in effective control of the business.

## **14 Fraudulent or misleading conduct**

A real estate agent must not engage in conduct that is fraudulent or misleading in the conduct of a real estate agency practice.<sup>6</sup>

*Example—*

A real estate agent must not misrepresent a prospective buyer's intention to the seller in order to have the seller renew a sole agency agreement or enter into a marketing campaign.

## **15 High pressure tactics, harassment or unconscionable conduct**

A real estate agent must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of a real estate agency practice.

*Examples of harassment—*

- 1 Using, or getting a third party to use, threatening or intimidating language or behaviour towards a client or customer.
- 2 Engaging in conduct that would make an ordinary person feel unwillingly compelled to comply with an agent's request or demand.

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<sup>6</sup> Engaging in conduct of this nature or other unlawful conduct could lead to a prosecution under the Act, for example see section 574 (False representations about property).

## Schedule (continued)

*Examples of unconscionable conduct—*

- 1 Taking unfair advantage of an agent's superior bargaining position relative to a client or customer.
- 2 Requiring a client or customer to comply with conditions that are not reasonably necessary for the protection of an agent's legitimate interests.
- 3 If it is reasonably apparent that a client or customer can not understand relevant documents, taking unfair advantage of the client's or customer's lack of understanding.
- 4 Exerting undue influence or pressure on, or using unfair tactics against, a client or customer or a person acting for a client or customer.

### **16 Claiming membership or endorsement**

A real estate agent must not falsely claim to be a member of, or endorsed by, an organisation or association.

### **17 Conflict of duty or interest**

A real estate agent must not accept an appointment to act, or continue to act, as a real estate agent for a client if doing so will place the agent's duty or interests in conflict with the client's interests.

### **18 Soliciting through false or misleading advertisements or communications**

A real estate agent must not solicit clients or customers through advertisements or other communications the agent knows are false or misleading.

*Example—*

Knowingly giving a prospective client an overestimate of the likely selling price of a property.

Schedule (continued)

**Part 3**                      **Rules specific to real estate  
agents**

**Division 1**                **General**

**19**      **Prior appointment of another agent or auctioneer**

- (1) Before accepting an appointment to sell property for a client, a real estate agent must take reasonable steps to find out whether the client has already appointed another real estate agent or auctioneer under a sole or exclusive agency for the sale.
- (2) The real estate agent (the *new agent*) must not solicit or accept the appointment if—
  - (a) the agent knows, or should know, that the appointment of another real estate agent or an auctioneer (the *existing agent or auctioneer*) for the sale is in force; and
  - (b) the client may have to pay the following if there is a sale—
    - (i) a commission under each appointment;
    - (ii) damages for breach of contract under the existing agent's or auctioneer's appointment.
- (3) However, subsection (2) does not apply if, before the client signs the new agent's appointment, the new agent gives the client a written statement that, if the client appoints the new agent and there is a sale, the client may have to pay the following—
  - (a) a commission under each appointment;
  - (b) damages for breach of contract under the existing agent's or auctioneer's appointment.

### Schedule (continued)

#### **20 Conjunction sales**

- (1) Before accepting an appointment to sell property for a client, a real estate agent must—
  - (a) explain to the client general issues about a sale conducted in conjunction with other agents (a ***conjunction sale***), and the issues about a conjunction sale relevant to the particular sale if it were to be a conjunction sale; and
  - (b) disclose to the client the agent's policy about conjunction sales, including the percentage apportionment of commission between the agents.
- (2) Before agreeing with another real estate agent to conduct a conjunction sale, an agent must—
  - (a) disclose to the client the name of the other agent with whom the agent proposes to act; and
  - (b) advise the other agent of the client's instructions for the sale.
- (3) A real estate agent must conduct a sale in conjunction with another real estate agent if the client authorises a conjunction sale.

#### **21 Advice about market price or rent**

- (1) A real estate agent, in attempting to obtain an appointment to sell, buy, exchange or lease property, must not knowingly mislead a person about the property's market price.
- (2) If a real estate agent gives a person an opinion about the market price or market rent for property, the agent must not accept instructions from the person to act as a real estate agent for the property unless the agent has given the person a written statement of the material facts that the agent has taken into account in forming an opinion about the property's market price or market rent.
- (3) A real estate agent appointed to sell, buy, exchange or lease property must keep the client informed, in accordance with

### Schedule (continued)

the client's instructions, if any, of the agent's opinion about the current market price or market rent of the property.

- (4) Also, the real estate agent must tell the client if the agent considers the selling or purchase price of property expected by the client is substantially more or less than the market price of the property.

#### **22 Finding out or verifying ownership and property description**

Before listing property for sale, lease or exchange, a real estate agent must take reasonable steps to find out or verify the property's ownership and property description.

#### **23 Finding out or verifying material facts**

- (1) A real estate agent appointed to sell, purchase, exchange or lease property must take reasonable steps to find out or verify the facts material to the sale, purchase, exchange or lease that a prudent real estate agent would have found out or verified to avoid error, omission, exaggeration or misrepresentation.
- (2) The steps must be taken before the agent lists the property and afterwards as the occasion arises.

#### **24 Agent to encourage disclosure by client**

A real estate agent must, at the time of listing a client's property for sale or lease and at all later times, encourage the client to disclose to the agent all relevant facts about the property.

#### **25 Disclosure to customer that agent is the client's agent**

- (1) A real estate agent must ensure a customer is aware the agent is acting for the client.
- (2) A real estate agent must not induce or allow a customer to believe that the agent is acting for the customer.



### Schedule (continued)

- (3) A real estate agent must warn a customer, as soon as possible, that any information disclosed to the agent may be disclosed to the agent's client.

## 26 Referral to service provider

- (1) A real estate agent who refers a client or customer to a service provider must not falsely represent to the client or customer that the service provider is independent of the agent.
- (2) For subsection (1), a service provider is ***independent*** of a real estate agent if—
- (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and
  - (b) the agent does not have a personal or commercial relationship with the service provider.

*Examples of relationships for paragraph (b)—*

- 1 A family relationship.
  - 2 A business relationship other than a casual business relationship.
  - 3 A fiduciary relationship.
  - 4 A relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.
- (3) If the service provider is not independent of the agent, the agent must disclose to the client<sup>7</sup>—
- (a) the nature of any relationship, whether personal or commercial, the agent has with the service provider; and
  - (b) the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client to the service provider.
- (4) In this section—

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<sup>7</sup> For the disclosures that must be made to a customer see the Act, section 138 (Disclosures to prospective buyer).

## Schedule (continued)

*client* includes a prospective client.

*service provider* means a provider of professional services associated with the sale, purchase, exchange or lease of property.

### **27 Goods and services**

- (1) A real estate agent must obtain a client's written approval before ordering goods or services if the price of the goods or services is more than the amount authorised to be incurred by the agent's appointment.
- (2) A real estate agent must take reasonable steps to ensure goods or services obtained for a client are at a competitive price.

### **28 Inducing breach of contract**

A real estate agent must not induce, or attempt to induce, a breach of, or an interference with, a contract between a client and a customer.

*Example—*

An agent must not induce a customer to breach a contract with a client to get the customer to enter immediately into a contract with another of the agent's clients.

### **29 Duty to obtain maximum sale price**

A real estate agent must obtain the maximum sale price for a client's property.

### **30 Opportunity to obtain independent advice or representation**

- (1) A real estate agent must give a client a genuine opportunity to obtain relevant independent professional advice or representation before the client appoints the agent.
- (2) A real estate agent must give a client or customer a genuine opportunity to obtain relevant independent professional

### Schedule (continued)

advice or representation before signing a contract for the sale or purchase of property.

#### **31 Failure to receive deposit**

A real estate agent acting as a deposit holder under a contract—

- (a) must inform the client in writing if the time under the contract for payment of the deposit has passed without the deposit being received by the agent; and
- (b) must not accept any late payment of the deposit unless—
  - (i) the client has been informed under paragraph (a); and
  - (ii) the client gives written instructions to accept late payment of the deposit.

## **Division 2 Property management**

#### **32 Inspection report and inventory**

- (1) This section applies if the appointment of a real estate agent to manage a rental property for a client provides for the agent to complete an inspection report and inventory and give the report and inventory to the client.
- (2) The real estate agent must complete the report and inventory in accordance with the appointment.

#### **33 Inspection of property for rent**

- (1) A real estate agent managing a rental property must accompany a customer on an inspection of the property.
- (2) A real estate agent must not give the keys to a property to a customer, even for a short time.

### Schedule (continued)

- (3) This section does not apply if the client has authorised otherwise in writing.
- (4) Also, this section does not apply to a customer renting premises if the right of occupancy of the premises is to be given for holiday purposes.

#### **34 Maintenance or repairs of rental property**

- (1) A real estate agent managing a rental property must promptly respond to and, subject to the client's instructions, attend to all requests by a customer for maintenance of, or repairs to, the property.
- (2) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

#### **35 Agent not to engage unlicensed person for building work**

- (1) A real estate agent managing a rental property must not engage a person to perform building work unless the person holds a licence under the *Queensland Building Services Authority Act 1991* authorising the performance of the work.
- (2) In this section—  
*building work* see the *Queensland Building Services Authority Act 1991*, schedule 2.

#### **36 Breach of agreement or contract**

A real estate agent managing a rental property must immediately notify the client in writing if the agent becomes aware of a customer's breach of the agreement or contract for the property, unless the agent's appointment to act as agent directs otherwise.

### Schedule (continued)

#### **37 Notifying managing agent of appointment to sell**

If a real estate agent accepts an appointment to sell a property that is a place of residence or business that is tenanted, the agent must immediately give written notice of the appointment to any agent responsible for managing the property.

#### **38 Notifying customer of appointment to sell**

- (1) This section applies if a real estate agent managing a rental property is aware that—
  - (a) the property is listed for sale; or
  - (b) a real estate agent or auctioneer has been appointed to sell the property; or
  - (c) the client intends to sell the property by private sale.
- (2) The agent must immediately give the customer written notice of—
  - (a) the intended sale of the property; or
  - (b) the appointment of the real estate agent or auctioneer for the sale of the property.<sup>8</sup>
- (3) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

#### **39 Final inspection of rental property**

- (1) A real estate agent managing a rental property must take reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the customer.

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<sup>8</sup> For the lessor's right of entry see the *Residential Tenancies Act 1994*, sections 109 (Grounds for entry), 110 (Notice of entry) and 111 (General qualifications about entry). For vacation of premises to which a periodic tenancy applies see section 160 of that Act (Notice to leave if premises being sold).

### Schedule (continued)

- (2) However, subsection (1) does not apply if the agent reasonably believes the agent's life or physical safety may be endangered by conducting the inspection in the presence of the customer.
- (3) If the final inspection discloses a thing to be done, including cleaning, for which the real estate agent has reason to believe the customer is responsible, the agent must give the customer a reasonable opportunity to attend to the thing.
- (4) This section does not apply to a customer renting premises if the right of occupancy of the premises was given for holiday purposes.

## **Division 3                      Use, disclosure and recording of information**

### **40            Confidentiality**

- (1) A real estate agent must not use or disclose confidential information about a client or customer obtained while acting for the client or dealing with the customer.
- (2) Subsection (1) does not apply to information—
  - (a) used or disclosed for a purpose authorised in writing by the client or customer; or
  - (b) that must be lawfully used or disclosed.

*Example of when information must be lawfully used or disclosed—*

To comply with legal process.

- (3) In this section—

***client*** includes a former client.

***customer*** includes a former customer.

***real estate agent*** includes a former real estate agent.

### Schedule (continued)

#### **41 Recording of information**

(1) A real estate agent who gives information about a client or customer for recording in a public document or in a database relating to customers must—

- (a) ensure the information is accurate; and
- (b) ensure the information, if adverse to the client or customer, relates to a matter that is not trivial or is not a minor breach of a tenancy agreement; and

*Example of matters that are not trivial—*

The termination of a tenancy because of any of the following—

- damage to premises
- injury to a person lawfully entitled to enter or remain on premises
- objectionable behaviour
- an unremedied or repeated breach of a term of the tenancy
- breach of an order of a court or tribunal relating to the tenancy.

- (c) take reasonable steps to disclose the information to the client or customer; and
  - (d) give the client or customer a reasonable opportunity to review the information; and
  - (e) ensure the client or customer is informed about how the information may be used; and
  - (f) immediately amend the information if the client or customer provides evidence that the information is inaccurate.
- (2) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

Schedule (continued)

## **Part 4                      Publicising code**

### **42      Publicity about code**

- (1) A real estate agent who is a principal licensee must prominently display a notice of the existence and availability of this code in the public area of each of the agent's offices.
- (2) If asked by a client or customer, a real estate agent must promptly tell the client or customer where to obtain a copy of this code.<sup>9</sup>

## **Part 5                      Complaint resolution**

### **43      Principal licensee to have complaint handling procedure**

- (1) This section applies to a real estate agent who is a principal licensee.
- (2) The agent must have a reasonable, simple and easy to use procedure in place for handling complaints by clients or customers of the agent.
- (3) The agent must have information readily available to inform clients and customers of the procedure.
- (4) The information must include the following details—
  - (a) how a complaint is to be made;
  - (b) when a complaint must be in writing and when it may be oral;
  - (c) the person who is to handle the complaint.
- (5) The agent must consider every complaint made by a client or customer and—

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<sup>9</sup> This code may be purchased from Goprint or accessed at <[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)>.



Schedule (continued)

- (a) accept the complaint, whether wholly or partly; or
  - (b) reject the complaint in writing.
- (6) If the agent accepts the complaint, whether wholly or partly, and restitution is required to be made to the client or customer (the ***complainant***), the agent must arrange for the restitution to be made—
- (a) within 7 days after accepting the complaint; or
  - (b) if the agent and the complainant agree, by a later day.
- (7) If the agent rejects the complaint, whether wholly or partly, the agent must give the complainant written reasons for the rejection.
- (8) The notice must be accompanied by a separate document containing—
- (a) a warning that there may be time restrictions on making a claim, including a claim against the fund under the Act; and
  - (b) a statement that the complainant should consider whether or not to seek legal advice; and
  - (c) a statement that the complainant—
    - (i) may seek mediation through the dispute resolution procedures of the Department of Justice and Attorney-General; or
    - (ii) may, depending on the nature and amount of the complaint, commence an action against the agent in a small claims tribunal or a court; or
    - (iii) may contact the Office of Fair Trading which may commence disciplinary proceedings, or take other action, under the Act.
- (9) The document may also include details about other ways available to the complainant to resolve the complaint.

## Schedule (continued)

*Example of another way available to resolve the complaint—*

An industry dispute resolution scheme may be available to the complainant because of the real estate agent's membership of an organisation.

- (10) However, the document must state that participation in an industry dispute resolution scheme is voluntary.

### **44 Client to be notified of complaint and outcome**

- (1) This section applies if a complaint is made by a real estate agent's customer and the complaint is dealt with under the complaint handling procedure mentioned in section 43.
- (2) The real estate agent must notify the relevant client of—
- (a) the complaint made by the customer; and
  - (b) the final outcome of the complaint.

### **45 Compliance with complaint handling procedure**

- (1) A real estate agent must comply with the complaint handling procedure mentioned in section 43 and the final outcome of the complaint.

*Examples of complying with final outcome of complaint—*

- 1 If a real estate agent accepts a complaint that requires a matter to be rectified, the agent must rectify the matter.
  - 2 A real estate agent must comply with an agreement reached through mediation about the subject matter of the complaint.
  - 3 A real estate agent must comply with a court decision about the subject matter of the complaint.
- (2) This section applies subject to any stay granted by a court.

## Endnotes

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated. . . . .	25
3	Key . . . . .	25
4	Table of reprints . . . . .	26
5	List of legislation . . . . .	26

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfcd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

*Property Agents and Motor Dealers (Real Estate  
Agency Practice Code of Conduct) Regulation 2001*

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## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 August 2001	7 September 2001

## 5 List of legislation

### **Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001 SL No. 122**

made by the Governor in Council on 26 July 2001

notfd gaz 27 July 2001 pp 1209–11

ss 1–2 commenced on date of notification

remaining provisions commenced 1 August 2001 (see s 2)

exp 1 September 2011 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.