

Queensland



Subordinate Legislation 2001 No. 121

Property Agents and Motor Dealers Act 2000

PROPERTY AGENTS AND MOTOR DEALERS (PROPERTY DEVELOPER PRACTICE CODE OF CONDUCT) REGULATION 2001

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1 Short title

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

2 Commencement

This regulation commences on 1 September 2001.

3 Code of conduct

The code of conduct in the schedule is the code of conduct about property developer practice prescribed for the Act, section 269.¹

¹ Act, section 269 (Code of conduct)

SCHEDULE

PROPERTY DEVELOPER PRACTICE CODE OF CONDUCT

section 3

PART 1—PRELIMINARY

1 Title

This code of conduct may be cited as the *Property Developer Practice Code of Conduct*.

2 Object

(1) The object of this code is to increase the accountability of property developers for their actions in carrying on the business of a property developer.

(2) The object is to be achieved by—

- (a) setting conduct standards for property developers; and
- (b) establishing principles for fair trading in property developer practice; and
- (c) providing for a system of complaint resolution for complaints about property developer practice.

3 Definitions

In this code—

“customer” means a buyer or prospective buyer of residential property being sold or marketed by a property developer.

“property developer” includes a property developer director and property developer salesperson.

SCHEDULE (continued)

“property developer practice” means the selling or marketing of residential property under a property developer’s licence.

4 Compliance with code

(1) This code contains provisions with which a property developer must comply.²

(2) If a property developer is an employee, this code overrides an instruction or request that does not comply with the code from the property developer’s employer.

PART 2—GENERAL RULES OF CONDUCT

5 Knowledge of Act and code

A property developer must have a reasonable knowledge and understanding of the Act and this code.

6 Fiduciary obligations

A property developer must comply with a fiduciary obligation incurred as a property developer.

7 Honesty, fairness and professionalism

(1) A property developer must act honestly, fairly and professionally in the conduct of a property developer practice.

(2) Without limiting subsection (1), a property developer must treat a customer honestly and fairly.

2 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)

Examples—

1. If a property developer shows a customer calculations of future capital growth of a property, the calculations must be based on fair market value, rather than an inflated asking price.
2. A property developer must not, for the purpose of disguising overvaluation of properties, engage in conduct that targets customers from outside the area where the properties are situated.

8 Skill, care and diligence

A property developer must exercise reasonable skill, care and diligence in the conduct of a property developer practice.

9 Property developer to ensure employees comply with Act and code

(1) A property developer must take reasonable steps to ensure a registered employee of the developer complies with the Act and this code in relation to the developer's business.

Example—

A property developer 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 property developer salesperson in charge of a property developer'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) A property developer director in charge of the business, at a place of business, of a property developer that is a corporation must take reasonable steps to ensure a registered employee at the place complies with the Act and this code in relation to the business.

(4) This section applies only to the extent that the Act, section 264(1)³ does not already require a property developer to take the steps mentioned in the section.

³ Act, section 264 (Responsibility for acts and omissions of salespersons)

SCHEDULE (continued)

10 Representations by employees

(1) A property developer must take reasonable steps to ensure that an employee of the property developer—

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

(2) A property developer that is a corporation must take reasonable steps to ensure that an employee of the property developer does not falsely represent that the employee is the person in effective control of the business of the corporation.

11 Fraudulent or misleading conduct

A property developer must not engage in conduct that is fraudulent or misleading in the conduct of a property developer practice.⁴

Example—

A property developer must not tell a customer that a reward or gift is free if the goods, services or property to which it relates is increased in price or decreased in quality as a result of the reward or gift.

12 High pressure tactics, harassment or unconscionable conduct

A property developer must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of a property developer practice.

⁴ 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 harassment—

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

Examples of unconscionable conduct—

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

13 Claiming membership or endorsement

A property developer must not falsely claim to be a member of, or endorsed by, an organisation or association.

14 Soliciting through false or misleading advertisements or communications

A property developer must not solicit customers through advertisements or other communications the developer knows are false or misleading.

Example—

A property developer must not make a statement about rental guarantees the developer knows is false or misleading.

SCHEDULE (continued)

PART 3—RULES SPECIFIC TO PROPERTY DEVELOPERS

15 Expert advice prepared to mislead or deceive customer

A property developer must not provide a customer with expert advice that has been prepared in a way that may mislead or deceive the customer because of the way it is prepared.

Example—

A property developer must not provide a customer with a valuation that is based solely on the property developer's previous sales if there are comparable sales in the area made by persons other than the property developer.

16 Finding out or verifying material facts

(1) Before marketing or offering residential property for sale, a property developer must take reasonable steps to find out or verify the facts material to the sale that a prudent property developer would have found out or verified to avoid error, omission, exaggeration or misrepresentation.

(2) The steps must be taken before the property developer offers the property for sale and afterwards as the occasion arises.

17 Referral to service provider

(1) A property developer who refers a customer to a service provider must not falsely represent to the customer that the service provider is independent of the developer.⁵

(2) For subsection (1), a service provider is “**independent**” of a property developer if—

- (a) the developer receives no rebate, discount, commission or benefit for referring a customer to the service provider; and
- (b) the developer does not have a personal or commercial relationship with the service provider.

⁵ For the disclosures that must be made to a customer see the Act, section 268 (Disclosure to prospective buyer).

SCHEDULE (continued)

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) In this section—

“service provider” means a provider of professional services associated with the sale of residential property.

18 Opportunity to obtain independent advice or representation

A property developer must give a customer a genuine opportunity to obtain relevant independent professional advice or representation before signing a contract in relation to residential property.

Example of developer not giving customer opportunity to obtain advice or representation—

A developer positively discouraging a customer from seeing a solicitor.

Examples of advice—

1. Legal advice.
2. A valuation.
3. Advice about the taxation effectiveness of buying the property.

19 Confidentiality

(1) A property developer must not use or disclose confidential information about a customer obtained while dealing with the customer.

(2) Subsection (1) does not apply to information—

- (a) used or disclosed for a purpose authorised in writing by the customer; or
- (b) that must be lawfully used or disclosed.

SCHEDULE (continued)

Example of when information must be lawfully used or disclosed—

To comply with legal process.

(3) In this section—

“**customer**” includes a former customer.

“**property developer**” includes a former property developer.

PART 4—PUBLICISING CODE

20 Publicity about code

(1) A property developer 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 developer’s offices.

(2) If asked by a customer, a property developer must promptly tell the customer where to obtain a copy of this code.⁶

PART 5—COMPLAINT RESOLUTION

21 Principal licensee to have complaint handling procedure

(1) This section applies to a property developer who is a principal licensee.

(2) The property developer must have a reasonable, simple and easy to use procedure in place for handling complaints by customers of the developer.

(3) The property developer must have information readily available to inform customers of the procedure.

⁶ This code may be purchased from Goprint or accessed at www.legislation.qld.gov.au.

SCHEDULE (continued)

(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 property developer must consider every complaint made by a customer and—

- (a) accept the complaint, whether wholly or partly; or
- (b) reject the complaint in writing.

(6) If the property developer accepts the complaint, whether wholly or partly, and restitution is required to be made to the customer (the “**complainant**”), the developer must arrange for the restitution to be made—

- (a) within 7 days after accepting the complaint; or
- (b) if the developer and the complainant agree, by a later day.

(7) If the property developer rejects the complaint, whether wholly or partly, the developer 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; and
- (b) a statement that a property developer is not required to participate in the fund under the Act, and that, if the complainant buys directly from a property developer, the complainant will not be able to access the fund; and
- (c) a statement that the complainant should consider whether or not to seek legal advice; and
- (d) a statement that the complainant—
 - (i) may seek mediation through the dispute resolution procedures of the Department of Justice and Attorney-General; or

SCHEDULE (continued)

- (ii) may, depending on the nature and amount of the complaint, commence an action against the property developer 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.

Example of another way available to resolve the complaint—

An industry dispute resolution scheme may be available to the complainant because of the property developer's membership of an organisation.

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

22 Compliance with complaint handling procedure

(1) A property developer must comply with the complaint handling procedure mentioned in section 21 and the final outcome of the complaint.

Examples of complying with final outcome of complaint—

1. If a property developer accepts a complaint that requires a matter to be rectified, the developer must rectify the matter.
2. A property developer must comply with an agreement reached through mediation about the subject matter of the complaint.
3. A property developer 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. Made by the Governor in Council on 26 July 2001.
2. Notified in the gazette on 27 July 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Office of Fair Trading.

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