

Queensland



Subordinate Legislation 2001 No. 123

Property Agents and Motor Dealers Act 2000

PROPERTY AGENTS AND MOTOR DEALERS (RESTRICTED LETTING AGENCY PRACTICE CODE OF CONDUCT) REGULATION 2001

TABLE OF PROVISIONS

Section		Page
1	Short title	4
2	Commencement.	4
3	Code of conduct.	4

SCHEDULE	5
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RESTRICTED LETTING AGENCY PRACTICE CODE OF CONDUCT

PART 1—PRELIMINARY

1	Title	5
2	Object	5
3	Definitions	5
4	Compliance with code	6

PART 2—GENERAL RULES OF CONDUCT

5	Knowledge of Act and code	6
6	Fiduciary obligations.	6
7	Honesty, fairness and professionalism	6
8	Skill, care and diligence	7
9	Agent to act in client's best interests	7
10	Agent to act in accordance with client's instructions	7
11	Agent to keep client informed of developments	7

*Property Agents and Motor Dealers (Restricted Letting No. 123, 2001
Agency Practice Code of Conduct) Regulation 2001*

12	Representations by employees	7
13	Fraudulent or misleading conduct	8
14	High pressure tactics, harassment or unconscionable conduct	8
15	Claiming membership or endorsement	9
16	Conflict of duty or interest.	9
17	Soliciting through false or misleading advertisements or communications .	9

**PART 3—RULES SPECIFIC TO RESTRICTED LETTING
AGENTS**

Division 1—General

18	Prior appointment of another agent.	9
19	Advice about market rent	10
20	Finding out or verifying ownership and property description.	11
21	Finding out or verifying material facts	11
22	Agent to encourage disclosure by client	11
23	Disclosure to customer that agent is the client's agent	11
24	Referral to service provider.	12
25	Goods and services	13
26	Inducing breach of contract.	13
27	Opportunity to obtain independent advice or representation	13

Division 2—Property management

28	Inspection report and inventory.	13
29	Inspection of lots for rent	14
30	Maintenance or repairs of lots in a building complex	14
31	Agent not to engage unlicensed person for building work	14
32	Breach of agreement or contract	14
33	Notifying customer of appointment to sell	15
34	Final inspection of lots in a building complex	15

Division 3—Use, disclosure and recording of information

35	Confidentiality.	16
36	Recording of information	16

PART 4—PUBLICISING CODE

37	Publicity about code	17
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PART 5—COMPLAINT RESOLUTION

38	Principal licensee to have complaint handling procedure	18
39	Client to be notified of complaint and outcome	19
40	Compliance with complaint handling procedure.	19

1 Short title

This regulation may be cited as the *Property Agents and Motor Dealers (Restricted Letting 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 restricted letting agency practice prescribed for the Act, section 119.¹

¹ Act, section 119 (Code of conduct)

SCHEDULE

RESTRICTED LETTING AGENCY PRACTICE CODE OF CONDUCT

section 3

PART 1—PRELIMINARY

1 Title

This code of conduct may be cited as the *Restricted Letting Agency Practice Code of Conduct*.

2 Object

(1) The object of this code is to increase the accountability of restricted letting agents for their actions in carrying on the business of a restricted letting agent.

(2) The object is to be achieved by—

- (a) setting conduct standards for restricted letting agents; and
- (b) establishing principles for fair trading in restricted letting agency practice; and
- (c) providing for a system of complaint resolution for complaints about restricted letting agency practice.

3 Definitions

In this code—

“**client**” means a person who appoints a restricted letting agent to let or to collect rents for lots in a building complex for the person.

“**customer**” means a person with whom a restricted letting agent deals on behalf of a client.

SCHEDULE (continued)

“holiday purposes” has the meaning given by the *Residential Tenancies Act 1994*, section 21.²

“restricted letting agent” includes an employed licensee.

4 Compliance with code

(1) This code contains provisions with which a restricted letting agent must comply.³

(2) This code overrides an instruction or request that does not comply with the code from a client or, if the agent is an employee, from the agent’s employer.

PART 2—GENERAL RULES OF CONDUCT

5 Knowledge of Act and code

A restricted letting agent must have a reasonable knowledge and understanding of the Act and this code.

6 Fiduciary obligations

A restricted letting agent must comply with a fiduciary obligation incurred as an agent.

7 Honesty, fairness and professionalism

(1) A restricted letting agent must act honestly, fairly and professionally in the conduct of a restricted letting agency practice.

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

3 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)

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

8 Skill, care and diligence

(1) A restricted letting agent must exercise reasonable skill, care and diligence in the conduct of a restricted letting agency practice.

(2) An agent must complete all work for a client as soon as is reasonably practicable.

9 Agent to act in client's best interests

A restricted letting 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

A restricted letting agent must act in accordance with a client's instructions unless it is contrary to this code or otherwise unlawful to do so.

Example—

An agent must not market or advertise or offer to let lots in a building complex at a price or on terms different from the price or terms authorised by the client.

11 Agent to keep client informed of developments

A restricted letting agent must keep a client informed of any significant development or issue in relation to an activity performed for the client.

12 Representations by employees

A restricted letting agent must take reasonable steps to ensure an employee of the agent—

- (a) does not falsely represent that the employee is the holder of a licence in relation to a restricted letting agency, or falsely use a title that suggests the employee is the holder of a licence; or

SCHEDULE (continued)

- (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.

13 Fraudulent or misleading conduct

A restricted letting agent must not engage in conduct that is fraudulent or misleading in the conduct of a restricted letting agency practice.⁴

Example—

A restricted letting agent must not misrepresent to a person the financial returns from letting lots in a building complex.

14 High pressure tactics, harassment or unconscionable conduct

A restricted letting agent must not engage in high pressure tactics, harassment or unconscionable conduct in the conduct of a restricted letting 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.

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.

⁴ Engaging in conduct of this nature or other unlawful conduct could lead to a prosecution under the Act, e.g. see section 574 (False representations about property).

SCHEDULE (continued)

15 Claiming membership or endorsement

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

16 Conflict of duty or interest

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

Example of agent's duty or interest in conflict with the client's interest—

An agent lets lots in a building complex for a client and the agent owns or has an interest in lots in the complex that the agent also lets.

(2) However, subsection (1) does not apply if the agent discloses the conflict to the client in writing before accepting the appointment or continuing to act.

17 Soliciting through false or misleading advertisements or communications

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

PART 3—RULES SPECIFIC TO RESTRICTED LETTING AGENTS

Division 1—General

18 Prior appointment of another agent

(1) Before accepting an appointment as a restricted letting agent for a client to let lots or to collect rents for lots in a building complex, a restricted letting agent must take reasonable steps to find out whether the

SCHEDULE (continued)

client has already appointed another restricted letting agent to let lots or to collect rents for lots in the complex.

(2) The restricted letting agent (the **“new agent”**) must not solicit or accept the appointment if—

- (a) the agent knows, or should know, that the appointment of another agent (the **“existing agent”**) to let lots or to collect rents for lots in the building complex is in force; and
- (b) the client may have to pay the following—
 - (i) a commission under each appointment;
 - (ii) damages for breach of contract under the existing agent’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, 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 appointment.

(4) In this section—

“agent” includes a real estate agent.

19 Advice about market rent

(1) A restricted letting agent, in attempting to obtain an appointment to let lots or to collect rents for lots in a building complex, must not knowingly mislead a person about the lots’ current market rent.

(2) If the agent gives a person an opinion about the market rent for the person’s lots, the agent must not accept instructions from the person to act as a restricted letting agent for the lots 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 lots’ market rent.

(3) An agent appointed by a client to let lots or to collect rents for lots must keep the client informed, in accordance with the client’s instructions, if any, of the agent’s opinion about the market rent of the lots.

SCHEDULE (continued)

(4) Also, the agent must tell the client if the agent considers the amount of rent expected by the client is substantially more or less than the market rent of the lots.

20 Finding out or verifying ownership and property description

Before a restricted letting agent lets lots or collects rents for lots in a building complex, the agent must take reasonable steps to find out or verify the lots' ownership and property description.

21 Finding out or verifying material facts

(1) A restricted letting agent appointed to let lots or to collect rents for lots in a building complex must take reasonable steps to find out or verify the facts material to letting the lots or collecting the rents that a prudent restricted letting agent would have found out or verified to avoid error, omission, exaggeration or misrepresentation.

(2) The steps must be taken before letting the lots or collecting the rents and afterwards as the occasion arises.

22 Agent to encourage disclosure by client

A restricted letting agent, at the time of appointment by a client to let lots or to collect rents for lots in a building complex and at all later times, must encourage the client to disclose to the agent all relevant facts about the lots.

23 Disclosure to customer that agent is the client's agent

(1) A restricted letting agent must ensure a customer is aware that the agent is acting for the client.

(2) The agent must not induce, or allow, a customer to believe that the agent is acting for the customer.

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

SCHEDULE (continued)

24 Referral to service provider

(1) A restricted letting 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 an 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 or customer—

- (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 or customer to the service provider.

(4) In this section—

“client” includes a prospective client.

“service provider” means a provider of professional services associated with the letting of lots or collecting of rents for lots in a building complex.

SCHEDULE (continued)

25 Goods and services

(1) A restricted letting agent must obtain a client's written approval before ordering goods or services for the client if the price of the goods and services is more than the amount authorised to be incurred by the agent's appointment.

(2) An agent must take reasonable steps to ensure goods or services obtained for a client are at a competitive price.

26 Inducing breach of contract

A restricted letting 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.

27 Opportunity to obtain independent advice or representation

(1) A restricted letting agent must give a client a genuine opportunity to obtain relevant independent professional advice or representation before the client appoints the agent.

(2) An agent must give a customer a genuine opportunity to obtain relevant independent professional advice or representation before signing a contract in relation to lots in a building complex.

Division 2—Property management

28 Inspection report and inventory

(1) This section applies if the appointment to act as a restricted letting agent to collect rents for lots in a building complex provides for the agent to complete an inspection report and inventory and give the report and inventory to the client.

(2) The agent must complete the report and inventory in accordance with the appointment.

SCHEDULE (continued)

29 Inspection of lots for rent

(1) A restricted letting agent must accompany a customer on an inspection of lots for rent in a building complex.

(2) An agent must not give the keys of the lots for rent to a customer, even for a short time.

(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.

30 Maintenance or repairs of lots in a building complex

(1) A restricted letting agent collecting rents from a customer for lots in a building complex must promptly respond to and, subject to the client's instructions, attend to all requests by the customer for maintenance of, or repairs to, the lots.

(2) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

31 Agent not to engage unlicensed person for building work

(1) A restricted letting agent 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.

32 Breach of agreement or contract

A restricted letting agent collecting rents from a customer for lots in a building complex must immediately notify the client in writing if the agent becomes aware of the customer's breach of the agreement or contract for the lots, unless the agent's appointment to act as agent directs otherwise.

SCHEDULE (continued)

33 Notifying customer of appointment to sell

(1) This section applies if a restricted letting agent is collecting rents from a customer for lots in a building complex and is aware that—

- (a) the lots are listed for sale; or
- (b) a real estate agent or auctioneer has been appointed to sell the lots; or
- (c) the client intends to sell the lots by private sale.

(2) The agent must immediately give the customer written notice of—

- (a) the intended sale of the lots; or
- (b) the appointment of the real estate agent or auctioneer for the sale of the lots.⁵

(3) This section does not apply to a customer renting premises if the right of occupancy of the premises is given for holiday purposes.

34 Final inspection of lots in a building complex

(1) A restricted letting agent collecting rents from a customer for lots in a building complex must take reasonable steps to ensure that any final inspection of the lots, on vacation of the lots, is conducted in the presence of the customer.

(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 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.

⁵ 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)

Division 3—Use, disclosure and recording of information

35 Confidentiality

(1) A restricted letting 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.

“restricted letting agent” includes a former restricted letting agent.

36 Recording of information

(1) A restricted letting 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—

Termination of the tenancy because of any of the following—

- damage to premises
- injury to a person lawfully entitled to enter or remain on premises
- objectionable behaviour

SCHEDULE (continued)

- an unremedied or repeated breach of a term or condition of the tenancy
 - a breach of an order of a tribunal or court 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 gives evidence that the information is inaccurate.

(2) In this section—

“**customer**” does not include a person who is renting premises if the right of occupancy of the premises is given for holiday purposes.

PART 4—PUBLICISING CODE

37 Publicity about code

(1) A restricted letting 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, an agent must promptly tell the client or customer where to obtain a copy of this code.⁶

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

SCHEDULE (continued)

PART 5—COMPLAINT RESOLUTION

38 Principal licensee to have complaint handling procedure

(1) This section applies to a restricted letting 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—

- (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

SCHEDULE (continued)

- (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.

Example of another way available to resolve the complaint—

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

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

39 Client to be notified of complaint and outcome

(1) This section applies if a complaint is made by a restricted letting agent's customer and the complaint is dealt with under the complaint handling procedure mentioned in section 38.

(2) The agent must notify the relevant client of—

- (a) the complaint made by the customer; and
- (b) the final outcome of the complaint.

40 Compliance with complaint handling procedure

(1) A restricted letting agent must comply with the complaint handling procedure mentioned in section 38 and the final outcome of the complaint.

SCHEDULE (continued)

Examples of complying with final outcome of complaint—

1. If an agent accepts a complaint that requires a matter to be rectified, the agent must rectify the matter.
2. An agent must comply with an agreement reached through mediation about the subject matter of the complaint.
3. An 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. 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.