

SCHEDULE 2 - Code of Conduct

Regulation 45

PART 1 - Preliminary

1. Definitions

(1) For the purposes of this Code of Conduct –

"Act" means the *Property Agents and Land Transactions Act 2005*;

"regulations" means the *Property Agents and Land Transactions Regulations 2006*.

(2) A term used in this Code that is defined in the Act or the regulations has the same meaning as so defined.

2. Meaning of client

For the purposes of this Code of Conduct –

(a) a person who is a client of a real estate agent is also a client of any property consultant or assistant property manager employed or engaged by that real estate agent; and

(b) a person who is a client of a property manager is also a client of any assistant property manager employed or engaged by that property manager.

3. Contravention of Act, regulations or Code

Without limiting what may constitute unsatisfactory professional conduct or professional misconduct, if a property agent contravenes a provision of the Act, the regulations or this Code of Conduct, that contravention may constitute unsatisfactory professional conduct or professional misconduct.

4. Attempt to do an act

If a property agent attempts to do an act which, if successfully completed, would constitute a contravention of a provision of the Act, the regulations or this Code of Conduct, that attempt may constitute unsatisfactory professional conduct or professional misconduct.

PART 2 - Supervision of Employees

5. Supervision of employees and persons engaged by agent

(1) A real estate agent, property manager or general auctioneer who is in effective or nominal control of business premises –

(a) is to diligently supervise the work of all other persons employed or engaged by him or her to work at those premises and is to ensure that they understand and comply with the Act, the regulations and this Code of Conduct; and

(b) while being permitted to delegate tasks to other persons so employed or engaged to work at those premises, must not delegate the responsibility for any aspect of the work undertaken at those premises.

(2) For the purposes of this clause –

"business premises" means a place where a property agent carries on business as a real estate agent, property manager or general auctioneer.

PART 3 - Duties to Client

6. Responsibility of property agent to client

A property agent must at all times accept that his or her first responsibility is service to the client whom he or she represents and, while serving the interests of the client, must act fairly, honestly and in a reasonable manner towards all other persons in connection with the client's business.

7. Information disclosure

A property agent –

(a) must not disclose information relating to the affairs of a client obtained while acting for the client unless the client consents in writing to the disclosure or the agent is required by law to make the disclosure; and

(b) must not use, in a manner prejudicial to a client's interests, information obtained while acting for the client unless the client consents in writing to the use; and

(c) must perform his or her duties to a client and carry out a client's lawful instructions; and

(d) must exercise due skill, care and diligence in carrying out his or her duties for a client; and

(e) must inform the client if, in his or her opinion, the price the client is prepared to accept on the listing of property is less than the fair market value of that property; and

(f) must ascertain all pertinent facts concerning a transaction undertaken for a client so as to avoid error, exaggeration or misrepresentation and, if any information is ascertained which is unknown to the client, must disclose that information to the client as soon as practicable; and

(g) must not, in respect of any transaction undertaken for a client –

(i) knowingly, by his or her conduct, convey to the client, or allow to be conveyed to the client, a false or misleading impression about any matter concerning the transaction; or

(ii) knowingly make to the client a statement or representation which is false or misleading; and

(h) must not engage in harsh or unconscionable conduct in the course of his or her dealings with a client.

8. Acceptance of, or demand for, payment

A property agent –

(a) must not accept or demand payment from a person other than the client in respect of work undertaken or to be undertaken for the client, being work in respect of which payment has been received from the client or for which the client is liable to pay; and

(b) must not accept or demand, or negotiate or attempt to negotiate, payment for work undertaken or to be undertaken for the client that exceeds the amount agreed; and

(c) when a client is a purchaser or lessee, must not demand or attempt to negotiate payment from the vendor or lessor.

9. Advertising and marketing

A property agent –

(a) must not erect a sign –

(i) if erected on private property other than the property being sold, that has not been authorised by the owner of the property on which the sign is erected; or

(ii) that contravenes any applicable law, regulation, by-law or planning scheme; and

(b) must not publish, or cause to be published, an advertisement which indicates that a client has given the authority for his or her property to be sold at a higher or lower price than the price authorised by the client unless the client has consented in writing.

10. Conflicts of interest, rights and responsibilities

(1) A property agent –

(a) must not accept an appointment to act, or continue to act, for a client where to do so would place the agent's interests in conflict with that of the client; and

(b) in respect of the same property, must not have as clients both vendor and purchaser or both lessor and lessee; and

(c) before obtaining a prospective client's signature to an agency agreement, must clearly explain to the prospective client his or her rights and responsibilities in respect of the agreement; and

(d) when a written offer to purchase a property is received from a prospective purchaser, must present the offer to the client as soon as possible; and

(e) when a prospective purchaser's written offer is presented to a client, must, as soon as possible, inform the prospective purchaser whether the client has accepted or rejected the offer; and

(f) must not disclose to a prospective purchaser particulars of any other offers to purchase the property.

(2) For the purposes of subclause (1)(c) –

"agency agreement" has the same meaning as in section 18(10) of the Act.

11. Second Commission

(1) A property agent who knows that another property agent has an agency agreement with a vendor must not introduce a purchaser to the vendor's property without advising the vendor that, in the event of the sale of that property to that purchaser, the vendor may incur a second commission.

(2) For the purposes of subclause (1) –

"agency agreement" has the same meaning as in section 18(10) of the Act; and "introduce" means, in the case of –

(a) a residential property, the physical inspection of a residence with a prospective purchaser; or

(b) a commercial property, the provision of documents to, or the commencement of discussions with, a prospective purchaser; or

(c) a rural property, the bringing to the notice of a prospective purchaser the availability of the property for purchase.

PART 4 - Unsatisfactory Professional Conduct and Professional Misconduct

12. Unsatisfactory professional conduct

Examples of behaviour that might constitute unsatisfactory professional conduct include, but are not limited to –

(a) a property agent unreasonably delaying the completion of work for a client; and

(b) a property agent not acting in the best interests of a client, unless it is unlawful to do so; and

(c) a property agent marketing, or advertising for sale, purchase, exchange or lease, a property at a price or on terms different from the price or terms authorised by the client; and

(d) a property agent offering to sell, purchase, exchange or lease on behalf of a client a property at a price or on terms different from the price or terms authorised by the client; and

(e) a property agent not keeping a client informed of any significant development or issue in relation to the property; and

(f) a property agent misrepresenting a prospective purchaser's intention to the vendor in order to have the vendor renew a sole or exclusive agency agreement or enter into an agreement with the agent to conduct a marketing campaign; and

(g) a property agent engaging in high-pressure tactics or harassment in the conduct of his or her property agency business; and

(h) a property agent not keeping himself or herself informed and up-to-date about the Act, the regulations, this Code of Conduct and any other legislation which affects the business of the property agent.

13. Professional misconduct

Examples of behaviour that might constitute professional misconduct include, but are not limited to –

(a) a property agent seriously neglecting or excessively delaying the completion of work for a client; and

(b) a property agent charging fees or costs which are, in the circumstances, grossly excessive; and

(c) a property agent consistently or substantially failing to reach reasonable standards of competence and diligence; and

(d) a property agent grossly contravening his or her fiduciary obligations as a property agent; and

(e) a property agent not acting honestly, or acting fraudulently; and

(f) a property agent consistently contravening the Act, the regulations or this Code of Conduct.

Note: For further information please refer to the Guide to the Code of Conduct published by the Board and available on its website at www.propertyagentsboard.com.au