

# Advice Note – Information Disclosure



The Property Agents Board (the Board) acts as the regulatory authority for property agents in Tasmania.

This advice note is provided to assist property agents to understand clauses in the Code of Conduct.

**Please note** the following information is intended only to provide a general overview and may be subject to change.

Clause in the Code of Conduct -

## 9. Information Disclosure

(1) A property agent –

- (a) must not disclose information relating to the affairs of a client obtained while acting for the client (and that obligation continues after the completion of the transaction) unless the client consents in writing to the disclosure or the property 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 as diligently as possible and carry out a client's lawful instructions; and
- (d) must exercise due skill, care and diligence when acting 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 a property is less than the fair market value of the property; and
- (f) must ascertain all pertinent facts in relation to a transaction undertaken for a client so as to avoid error, exaggeration or misrepresentation and, if any information about any matter in relation to the transaction, whether or not it is a fact, and whether or not it is unknown to the client, is ascertained, 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 in relation to the transaction; or
  - (ii) knowingly make to the client a statement or representation which is false or misleading.

(2) A property agent –

- (a) must not disclose information relating to the affairs of a customer obtained in the course of the property agent's business that the customer requests to keep confidential (and that obligation continues after the completion of the transaction); and
- (b) must exercise due skill, care and diligence when interacting with a customer; and
- (c) must in interacting with a customer ascertain all pertinent facts in relation to a transaction so as to avoid error, exaggeration or misrepresentation; and
- (d) must not, in respect of any transaction –

- (i) knowingly, by his or her conduct, convey to a customer, or allow to be conveyed to a customer, a false or misleading impression about any matter in relation to the transaction; or
- (ii) knowingly make to the customer a statement or representation which is false or misleading.

- (3) A property agent must not engage in harsh or unconscionable conduct in the course of his or her dealings with a client or customer.

**Rationale**

The information disclosure clause in the Code of Conduct relates to the interaction between the property agent, the client and the customer and what, when and how information is disclosed.

The Code provides that a property agent should not disclose information relating to the client or customer unless the consent is provided or unless it is required by law.

The information disclosure provisions also highlight the manner in which a person behaves (conduct) because it is not always what a person says that provides meaning, it can be the way in which something is said or even certain gestures.

The information disclosure provisions relate to when a property agent is working for the client and interacting with the customer **and** after the interaction has been finalised.

A property agent can promote themselves or the listings/sale etc achieved however it is important to de-identify information of a client or customer.

Case Study - Confidential Information

Case Study - False and Misleading Advertising