

REAL ESTATE INSTITUTE OF NEW SOUTH WALES
CODE OF PRACTICE



1. Foreword

The Real Estate Institute of Australia encourages the highest standards in real estate practice. Its unceasing aim is that the practice of real estate be universally recognised as a profession respected and trusted by all. As a necessary step towards this goal REIA recognises the importance of setting out in clear and unambiguous terms a Code of Ethical Conduct. The REIA commends this recommended Code to all affiliated bodies. The Code should be observed and practised by all members of affiliated bodies in the letter and the spirit.

In order that the Code may achieve its purpose, it is necessary that members of affiliated bodies, such as REINSW, should have an intelligent appreciation of both ethics and the provisions of the Code.

Firstly, what is ethics? Ethics is defined as the science of duty, a system of principles and rules of duty.

Secondly, how does this Code of Ethics affect members of affiliated bodies in the conduct of their businesses? It is a standard of moral conduct promulgated by your Institute for the protection both of the public and of members. It endeavours to give effect to the golden rule – "Do unto others as you would they should do unto you."

The Code, if conscientiously adhered to by all members of affiliated bodies, will maintain the prestige of your Institute, increase your pride in your chosen calling and render the conduct of your business easier and more pleasant.

To achieve these ends, both members of affiliated bodies and their employees (particularly sales staff) must be well versed in the provisions of the Code, understand them and conscientiously observe them at all times.

Ignorance of the Code of Ethics will not be accepted as an excuse for its non-observance, either by members of affiliated bodies or by their staff.

Maintenance of a high standard of ethical practice is the direct responsibility of every member of the Institute.

The confidential and responsible nature of an estate agent's work makes it a matter of public concern that the integrity and reputation of a real estate agent should be beyond question.

The prestige of any professional body depends to a very great extent upon the ethical standards observed by its individual members, both in

their association with one another and in their relationships with the community in general and therefore all members have a duty to conduct their business in a manner which will effectively uphold and enhance the reputation of the Real Estate Agency profession.

2. Interpretation

Member means and includes any member of any affiliated body.

Institute means any affiliated body.

Affiliated Bodies means and includes the following:

- Real Estate Institute of Queensland
- Real Estate Institute of New South Wales
- The Real Estate Institute of South Australia
- The Real Estate Institute of Western Australia
- The Real Estate Institute of Tasmania
- The Real Estate Institute of Victoria
- The Real Estate Institute of the Australian Capital Territory
- The Real Estate Institute of the Northern Territory

Client means one who retains a member agent to represent his interests in a real estate transaction.

Customer means one who transacts business with a member agent but does not retain his services.

3. Code of Practice

SECTION 1 CODE OBJECTIVES

- 1.1 This is the national code of conduct of the Real Estate Institute of Australia as adopted and implemented by the Real Estate Institute of New South Wales and is a public statement of the principles, values and behaviour expected of members of the Institute.
- 1.2 The objective of this code of conduct is to promote and encourage a high standard of ethical practice by members and their employees in their dealings with other members, other agents, their employees and members of the public.
- 1.3 By following this code a member will not engage in conduct that is:
- (a) contrary to good estate agency practice; or
 - (b) detrimental to the reputation or interests of the profession, the Institute or its members.

SECTION 2 PROFESSIONAL STANDARDS

- 2.1 In this Code:

"Agent" means a licensed real estate agent, strata managing agent, stock and station agent, business agent or valuer.

"Client" means a person who retains a member to represent their interests in a real estate transaction.

"Customer" means a person who transacts business with a member but does not retain their services.

"Employee" means a sales person, sales representative, agent's representative, property manager, body corporate manager or any other person in the employ of, or acting on behalf of, a member.

"Fee" includes commission, charges, or other remuneration whether monetary or otherwise.

"Institute" means the Real Estate Institute of New South Wales.

"Member" means any member of the Institute, and includes any employee of a member.

"Estate agents legislation" means legislation in New South Wales regulating real estate agents, strata managing agents, stock and station agents, business agents and valuers.

Duties and Obligations

2.2 A member must have a working knowledge of agency law which sets out the duties and obligations of an agent towards the client.

Knowledge of the Law

2.3 A member must have a working knowledge of:

- (a) estate agents legislation and any other regulations made under such legislation; and
- (b) other statutes and any rules or regulations in force such as fair trading and trade practices legislation to the extent that they are relevant to the conduct of the real estate profession.

Compliance with Legislation

2.4 A member must not, in the conduct of estate agency, contravene or fail to comply with any statute, rule or regulation in force to the extent that it is relevant to the conduct of the real estate profession.

Good Real Estate Agency Practice

2.5 (a) A member must exercise skill, care and diligence in the conduct of the profession.

(b) A member must complete all work on behalf of the client as soon as is reasonably practicable.

- 2.5.1 A member must act in the best interests of the client except where it would be unreasonable or improper to do so.
- 2.5.2 A member must not induce or attempt to induce a breach of or an interference with a contract or arrangement of sale, letting or agency.
- 2.5.3 A member must not solicit or accept an agency if the member is aware that any other agency is in force which may obligate the client to pay two fees or expose the client to a claim for damages for breach of contract in the event of a sale taking place, unless the member gives a prior written statement to the client that the client may be liable to two fees or for a claim for damages for breach of contract if the client signs a further agency agreement.
- 2.5.4 A member may act in conjunction with another member if so authorised by the client.

Authorities and Instructions

- 2.6 A member must not act as agent or represent himself or herself as acting as agent on behalf of a person without authority.
 - 2.6.1 A member must act in accordance with the instructions of a client except where to do so would be unlawful or contrary to good agency practice.
 - 2.6.2 An agent must not:
 - (a) advertise or offer for sale or lease any real estate or business at a price or on terms different from that authorised by the client; or
 - (b) advertise or offer to purchase or lease on behalf of a client any real estate or business on terms different from that authorised by the client.
 - 2.6.3 The price at which a member offers a property shall be in accordance with the instructions of the client. However, if the member considers that the price asked by a client is more or less than fair market value, the member shall advise the client accordingly.

Fair Conduct

- 2.7 A member must act fairly and honestly and to the best of his or her knowledge and ability with all parties in a transaction.

- 2.7.1 A member must not mislead or deceive any parties in negotiations or a transaction.
- 2.7.2 A member must not engage in harsh or unconscionable conduct.

Supervision of Employees

- 2.8 A member or the person in effective or nominal control of the agency must properly supervise the agency business and take reasonable steps to ensure that employees of the agency comply with the provisions of estate agents' legislation, this code of conduct and other relevant statutes, rules and regulations where applicable to them.
- 2.8.1 If an employee fails to comply with the provisions of estate agents' legislation, this code of conduct or other relevant statutes, rules or regulations where applicable then, for the purposes of section 2.9.1 of this Code, the member or the person in effective control of the agency business shall have the onus of proving that he or she complied with the requirements of that section.

Verifying Information

- 2.9 Prior to the execution by the client of any contract relating to the sale or lease of any real estate or business, the member must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent member would have ascertained in order that the member may avoid error, exaggeration or misrepresentation.
- 2.9.1 It is the duty of a member to act in a professional manner and to ascertain all available pertinent facts concerning the property for which the member accepts the agency so that in providing the service the member may avoid error, exaggeration or misrepresentation.
- 2.9.2 When a member receives instructions to offer real estate for sale the member shall take all reasonable steps to verify the ownership of the property and the property description.

Best Interests of the Client

- 2.10 A member must not accept an engagement to act, or continue to act, where to do so would place the member's interest in conflict with that of the client.

Confidential Information

- 2.11 A member must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, except for information that an agent is required by law to disclose.
- 2.11.1 A member must communicate all offers to the client as soon as practicable.

Commissions and Expenses

- 2.12 A member must not accept or demand any commission from any person, other than the client, in respect of any service performed or to be performed by the member, being a service in respect of which the member receives commission or is entitled to receive commission from the client.
- 2.12.1 A member must not demand, retain or receive a discount or rebate which relates to a service by a stocktaker or tradesperson, or to advertising, in connection with a transaction or a service provided by the member unless the member has obtained the written consent of the client to the seeking or retaining of the discount or rebate by the member.
- 2.12.2 A member must not demand, retain or receive a commission for a service or transaction which is greater than the amount agreed with the client.
- 2.12.3 If a member is entitled to seek reimbursement from a member of any expense which the member has incurred, the member shall promptly supply to the client all relevant information and material which the client may reasonably require as to the amount of the expense, and to be satisfied that the expense was properly incurred by the member.
- 2.12.4 A member shall not seek or retain reimbursement of an expense which the member has incurred in respect of advertising, signboards, printed material, and promotions unless:
 - (a) the client has agreed in writing to pay the expense;and

- (b) the agreement specifies a maximum amount which the member may seek or retain by way of reimbursement.

Tenancy

- 2.13 A member must immediately notify the owner when the member becomes aware of a significant breach or repeated breaches of the tenancy agreement.
- 2.13.1 A member managing a rental property must fully complete inventory and inspection reports and provide such reports to the owner in accordance with the terms of the property management agreement.

Notifying Managing Agents

- 2.14 If a member accepts an engagement to sell any real estate and is or becomes aware that another member is the managing agent of that real estate, the member must immediately give written notice of the appointment to the managing agent, unless otherwise instructed, in writing, by the client.

Fraud and Misrepresentation

- 2.15 It is the duty of every member to protect the public against fraud, misrepresentation or unethical practices in connection with real estate transactions.

Member's Responsibility

- 2.16 No instructions or inducements from any client or customer will relieve a member from the responsibility of strictly observing this code of conduct.

Disputes

- 2.17 A member must make every effort to minimise disputes with other members, agents, and members of the public and to resolve complaints or disputes that do arise as expeditiously and as fairly as possible. It shall be a breach of this Code for a member, in dispute with a fellow member in relation to this Code, to resort to action at law before submitting the matter to the Institute for adjudication in the first instance.

Member's Employee Representations

- 2.18 An employee of a member must not intentionally represent himself or herself as the holder of a real estate agent's licence or the person in effective control of the estate agency business or a corporation that is the holder of a real estate agency licence.