



THE REAL ESTATE CODE

CONDUCT, ETHICS AND BEHAVIOUR IN REAL ESTATE

Version – 20/4/09

SYNOPSIS

A Practitioner should:

1. Uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute, and in particular, conduct business and personal activities in compliance with the Code and Legislation.
2. Act in the best interests of their Client.
3. Obtain all instructions in writing.
4. Ensure a compliant Agency Contract is in clear and understandable terms.
5. Clearly disclose all expected expenses and fees in writing in advance.
6. Avoid any conflict of interest.
7. Not disclose confidential information.
8. Disclose pertinent facts of which they are aware.
9. Provide an honest, researched and realistic market appraisal of a property.
10. Be transparent in their business dealings.
11. Treat other Practitioners with respect.
12. Attend ongoing training.
13. Resolve all disputes in a professional manner.

CONDUCT, ETHICS AND BEHAVIOUR IN REAL ESTATE

The Real Estate Code ("the Code") sets boundaries of acceptable conduct in real estate practice and defines minimum standards of behaviour required to hold membership of the Real Estate Institute of South Australia Incorporated ("REISA").

The Code provides a public standard from which the profession, the legal system, Government legislators and consumers can benchmark behaviour and base disciplinary actions.

The objectives of the Code are to (1) define, (2) encourage and reward compliance, and (3) enable enforcement of conduct, ethics and appropriate behaviour.

DEFINITIONS

In the Code -

"Agency Contract" – means any agreement entered into between a Practitioner and Client with respect to the sale, rental or management of the Client's property.

"Appraisal" – means the assessment of a property for the purpose of determining an estimated selling price. An Appraisal is not a Valuation.

"Behind the Sign" – means the act of a Practitioner approaching another Practitioner's Client to solicit business.

"Client" – means any person or entity who has engaged a Practitioner to act on their behalf.

"Customer" – means any person or entity involved in a transaction but not as a Client.

"Legislation" – means any legislation and laws in force that affect or regulate Practitioners.

"Member" – means any member of REISA and includes any employee of a member.

"Practitioner" – means any registered agent, sales representative, property manager, strata manager, Trainee or auctioneer (as defined in the *Land Agents Act 1994*) involved in real estate for fee or reward.

"Trainee" – means a person who is undertaking a traineeship as a sales representative.

"Transaction" – means the sale, purchase or rental management of real estate or a business.

"Valuation" – means a formal written assessment of value which must be conducted by a qualified valuer.

1. CONDUCT

A Practitioner should uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and, in particular, conduct business and personal activities in compliance with the Code and Legislation.

- 1.1 A Practitioner should only agree to act for a Client when they reasonably expect to be able to fairly and competently serve the Client.
- 1.2 A Practitioner should not solicit Clients of other Practitioners or engage in 'Behind the Sign' behaviour (with the exception of mass deliveries of promotional material which includes a disclaimer, such as *"As this is part of a general promotion, please disregard this letter if you have already retained another real estate agent"*).
- 1.3 A Practitioner should promptly disclose to REISA any conduct by them or another Practitioner which is contrary to the Code or Legislation.
- 1.4 A Practitioner should promptly disclose to REISA any matter which may adversely affect a Practitioner's ability to practice according to the Code or Legislation.
- 1.5 A Practitioner should not provide Clients or Customers with insurance, financial or investment advice unless appropriately qualified or appointed.
- 1.6 A Practitioner in effective control of a real estate business should properly supervise the business and ensure that employees of the business comply with the Code and Legislation.
- 1.7 A Practitioner should not discriminate against any person in any capacity for reasons of race, colour, religion, sex, familial status, national origin, age, disability or for any other reason.

2. RELATIONS WITH CLIENTS

A Practitioner should act in the best interests of their Client.

- 2.1 A Practitioner should at all times exercise loyalty to the interests of the Client and should not act in any way which could be construed as being contrary to the best interests of the Client.
- 2.2 A Practitioner should communicate effectively and promptly with Clients.
- 2.3 A Practitioner should provide the Client with updates as often as reasonably necessary regarding the progress of the Transaction.

3. AUTHORITIES AND INSTRUCTIONS

A Practitioner should obtain all instructions in writing.

- 3.1 A Practitioner should obtain all authorities and instructions to act in a Transaction on behalf of a Client in writing.
- 3.2 A Practitioner should do everything possible to act in accordance with the Client's instructions unless it is contrary to this Code or unlawful.
- 3.3 A Practitioner should take all reasonable steps to avoid error, exaggeration or misrepresentation of any material facts regarding the Transaction.
- 3.4 A Practitioner should use reasonable care to ensure the documents relating to the Transaction remain accurate at all times.

4. AGENCY CONTRACT

An Agency Contract should be in clear and understandable terms.

- 4.1 An Agency Contract between Practitioner and Client should be in clear and understandable terms, and should set out the matters agreed between them.
- 4.2 A Practitioner appointed as a sole agent should take reasonable steps before entering into an agreement to find out whether the Client already has an Agency Contract in place and, if so, the Practitioner should not accept the instructions of that Client.
- 4.3 A Practitioner should not knowingly induce or attempt to induce a person to breach an Agency Contract.
- 4.4 A Practitioner should not knowingly induce or attempt to induce a person to enter into an Agency Contract which would make that person liable to pay commission or fees to more than one practitioner.
- 4.5 A Practitioner should give the Client a genuine opportunity to obtain independent advice before entering the Agency Contract.
- 4.6 The period of an initial Agency Contract should not exceed the period specified in Legislation (if any).
- 4.7 A Practitioner should provide a Client with a signed copy of the Agency Contract immediately.
- 4.8 Any amendment to the Agency Contract should be agreed to in writing by each party.

5. EXPENSES/FEEES

A Practitioner should disclose all expected expenses and fees in writing in advance.

- 5.1 A Practitioner should provide a Client with a written statement of expected expenditure in the Agency Contract and, if applicable, advise the Client that the Practitioner will or may receive benefits from a third party and must disclose the details of those benefits.
- 5.2 A Practitioner should endeavor to expend funds of the Client to achieve the greatest benefit for the Client.

6. CONFLICT OF INTEREST

A Practitioner should avoid any conflict of interest.

- 6.1 A Practitioner should avoid any conflict of interest, including between Clients or the Practitioner's business.
- 6.2 A Practitioner should not act for a person in any Transaction where the Practitioner is, or becomes, aware that the interest of that person is, or would be, in conflict with that of the Practitioner.
- 6.3 A Practitioner should not acquire an interest in or buy a property, or present offers for or on behalf of:
 - themselves,
 - any member of their immediate families,
 - their business, or
 - any employee, or

- any entities in which they have any ownership or interest without making the true position known to the vendor in writing prior to the acquisition.¹

- 6.4 Where there is a potential for, or actual, conflict of interest, the Practitioner should advise the Client and provide them with the opportunity to terminate their instructions with the Practitioner.
- 6.5 If a Practitioner is selling a property in which they have a direct or indirect interest, a Practitioner should reveal their ownership or interest in writing to the purchaser or the purchaser's representative at the commencement of negotiations.

7. CONFIDENTIALITY

A Practitioner should not disclose confidential information.

- 7.1 A Practitioner should not disclose confidential information relating to a Client without prior written consent, unless required to do so by law.
- 7.2 A Practitioner should not disclose details relating to an offer on a property by a Customer (including the Customer's personal details) to anyone other than the Client.
- 7.3 A Practitioner should securely retain any documents relating to a Transaction for at least five (5) years.
- 7.4 A copy of the Practitioner's privacy policy should be available at all times.

8. DISCLOSURE

A Practitioner should disclose pertinent facts of which they are aware.

- 8.1 A Practitioner should not exaggerate, misrepresent or conceal relevant facts regarding a Transaction of which they are aware.
- 8.2 A Practitioner is not, however, expected to discover latent defects in the property or advise on matters outside the scope of their expertise.
- 8.3 A Practitioner should recommend to potential purchasers that they obtain independent professional advice.

9. PRICING

A Practitioner should provide an honest, researched and realistic market appraisal of a property.

- 9.1 A Practitioner should provide a realistic Appraisal of the market value of a property, which is substantiated by comparative sales data.
- 9.2 A Practitioner should not create an inflated expectation of price in order to secure a listing from a potential Client.
- 9.3 A Practitioner should not intentionally create an ambiguous or misleading price range or under quote the expectations of the Vendor to potential buyers nor encourage the Client to enter into an arrangement whereby consumers could be misled.
- 9.4 Subject to Client's instructions, Practitioners should include the expected

¹ Note the statutory requirement for Commissioner consent to be obtained – S24G of the *Land and Business (Sale and Conveyancing) Act 1994*.

price or price range in some form of communication in relation to a given property.

- 9.5 All communications to the public regarding expected price or price range of a property should be consistent with the estimated selling price agreed between the Client and Practitioner as detailed in the Agency Contract and as required by Legislation.
- 9.6 If the estimated selling price needs to be revised during the marketing campaign, both parties should agree in writing and the previous price should cease to be used.
- 9.7 At all times, the price quoted by a Practitioner, either verbally or in writing, should not be less than the price the Client would accept or as required by Legislation.

10. TRANSPARENCY

A Practitioner should be transparent in their business dealings.

- 10.1 A Practitioner should act in an honest, forthright and transparent manner in all real estate dealings.
- 10.2 A Practitioner should not accept, directly or indirectly, any commission, rebate, fee, discount or other benefit without giving notice to the Client.
- 10.3 If a property is to be sold to a developer (other than through public auction) for whom the Practitioner will act, then prior to the sale, the Practitioner should advise the Client in writing of that conflict or potential conflict. The Practitioner should then arrange for an independent valuation of the property to be undertaken for the benefit of the Vendor at the cost of the Practitioner and comply with other elements of the Legislation.
- 10.4 A Practitioner should disclose in writing to an original Client any interest in a 'Subject to' sale arrangement (upon entering that arrangement with another Client).
- 10.5 A Trainee should advise a potential client of their trainee status prior to taking instructions.

11. RELATIONS WITH OTHER PRACTITIONERS

A Practitioner should treat other Practitioners with respect.

- 11.1 A Practitioner should not make, authorise or encourage any derogatory, disparaging or unfounded comments concerning the practices of another Practitioner.
- 11.2 A Practitioner should not exaggerate or misrepresent their services in their own right or compared with services offered by other Practitioners.
- 11.3 Nothing in this Code should restrict legal or reasonable business competition by and among Members and/or Practitioners.
- 11.4 A Practitioner should attempt to settle disputes with any other Practitioner in an appropriate professional manner.

12. PROFESSIONAL DEVELOPMENT

A Practitioner should attend ongoing training.

- 12.1 A Practitioner should remain fully informed and undertake ongoing professional development to ensure they are familiar with all relevant legislation and codes.
- 12.2 A Practitioner should endeavour to meet the Continuing Professional Development standards set by REISA.

13. DISPUTE RESOLUTION – MEMBER TO MEMBER AND CLIENT/CUSTOMER TO MEMBER

A Practitioner should resolve disputes in a professional manner.

- 13.1 Where a dispute arises between Members or between a Client/Customer (but not a non-Member Practitioner) and a Member, there are three (3) essential steps that must be taken.
 - 13.1.1 The parties should:

In the first instance, attempt to resolve the matter informally by telephone, letter, email or face-to-face meeting. A copy of all communications should be supplied to the Chief Executive Officer of REISA. A Register of Complaints will be maintained by REISA.
 - 13.1.2 If resolution is not achieved, then:

The parties should request mediation by REISA. The Chief Executive Officer of REISA will nominate an independent mediator and this mediator will meet with both parties (either together or individually as deemed appropriate in the circumstances).

Each party will provide a written submission to REISA no less than seven (7) days prior to the mediation.
 - 13.1.3 If resolution is not achieved through mediation then:

The matter may be referred to the Professional Standards Committee and dealt with in accordance with REISA's Rules and By-Laws in force from time to time, or the Office of Consumer and Business Affairs at the discretion of REISA.

PUBLICISING THE CODE

A Member should prominently display a notice of the existence of this Code, and their adherence to it, in the public area of their office.

Upon request, a Member should advise a Customer that the current version of the Code is available at www.reisa.com.au.