
Real Estate Agents Authority

**Report on the process for developing the
Professional Standard on Supervision**

7 June 2017

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Foreword

In our regulated environment, supervision is critical to maintaining professional standards and is an important safeguard for consumers. Effective supervision is critical to the professional development of salespersons.

Supervision is the topic of the first standard set by the Real Estate Agents Authority (REAA).

Setting a professional standard on supervision is intended to reinforce expectations of best practice. Complaints Assessment Committees (CACs) will use this professional standard as a benchmark when considering complaints against licensees.

It is important that licensees understand that the Standard is deliberately principle-based and is not prescriptive. This will allow supervisors and salespersons to set up meaningful supervision arrangements that take account of the experience, knowledge, and operating conditions of both parties.

Supervision is not mentoring, coaching, training, or line management, although there is some overlap in competencies. Some supervisors are also mentors. All supervisors and mentors are, in some ways, role models for the people they supervise, providing training, support, education, and supervision.

Supervisors are ultimately professionals who have more experience, knowledge and skills in their field than the professionals they supervise. The supervisor's key task is to structure and facilitate the process of supervision, allowing other professional(s) to grow and learn in a safe, supportive, affirming environment, with both parties contributing to the supervision process.

I urge all licensees to ensure that they understand the Standard so it becomes an engrained feature of your day-to-day participation in our industry.



Kevin Lampen-Smith
Chief Executive Officer/Registrar

Introduction

This report summarises the process to arrive at REAA's Professional Standard on Supervision ("the Standard").

REAA recognised the importance of consulting with industry and other stakeholders on its proposal to set a professional standard on supervision. There were two rounds of consultation which resulted in invaluable feedback and helped identify opportunities for additional guidance, and highlighted gaps.

The final Standard was approved by the REAA Board in May 2017 and distributed to licensees in June 2017.

Structure of this report

This report 'tells the story' of the Standard's development, including:

- the background
- a summary of the consultation processes
- the outcome of the consultation processes
- a general discussion of the feedback themes and REAA's view on these
- a summary of the decisions and changes made to the Standard as a result of the submissions.

The report covers the common themes and key points raised in the feedback, rather than the detail of each submission.

The final Standard (**Appendix A**) is available [here](#) on REAA's website.

More detailed reports on the feedback received during the first and second rounds of consultation (**Appendix B** and **C**) can also be found [here](#) on REAA's website.

Background

In line with its statutory functions, REAA proposed to set professional standards by issuing a standard on supervision under section 12 of the Real Estate Agents Act 2008 (the Act).

The purpose is to introduce professional standards as a proactive form of regulatory intervention by providing a benchmark for best practice to inform compliance advice, CAC and Real Estate Agents Disciplinary Tribunal decision-making, agency policies and procedures, and consumer expectations.

The Standard will:

- provide a benchmark for performance and behaviour
- provide greater certainty on what the regulator expects from the sector in terms of acceptable practice

- enable agencies to adapt the general principles and guidelines to suit their situation, recognising that one size does not fit all
- help the sector in situations where legislative or regulatory provisions are vague
- help those wanting to comply with acceptable standards
- lay a better foundation for enforcement action against non-compliant persons.

Establishing what industry standards are, or should be, is particularly relevant in the context of disciplinary proceedings. Under section 72 of the Act, a licensee may be found guilty of unsatisfactory conduct if their conduct “*falls short of the Standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee*”. The “*maintenance of professional standards*” is a key factor considered by the Real Estate Agents Disciplinary Tribunal when imposing penalties in disciplinary proceedings under the Act¹.

REAA had seen that issues with adequacy of supervision were often raised in disciplinary proceedings where the immediate complaint related to the actions or omissions of a salesperson. It became routine for a CAC to add the eligible officer, branch manager, or supervising agent to a complaint file because of the potential supervision issues involved.

The content of the Standard has been developed considering relevant case law, existing informal guidance on REAA’s website, and recurring consumer enquiries.

The Standard is intended to convey REAA’s principle-based expectations around supervision.

Consultation process

A draft standard was released for consultation in October 2016, with submissions closing in early December 2016.

REAA particularly wanted to receive feedback on the:

- operational impact for industry
- difference between line management of employees and professional supervision
- ratio of salespersons to supervisor
- remote supervision
- relevance to compliance and enforcement
- sale and purchase agreements.

15,994 licensees and 757 agencies were consulted via an online survey tool. Other stakeholders, such as the Ministry of Justice, NZ Law Society, and the Real Estate Agents Disciplinary Tribunal were invited to make a submission.

The online survey attracted 69 submissions (including some which were anonymous, others that were incomplete, and four email submissions).

The initial round of consultation led to changes to the draft Standard and was followed by a second round of consultation.

¹ *Real Estate Agents Authority v Lum-on* [2012] NZREADT 47.

The main aims of the second consultation were to identify any misunderstanding of the original feedback received (where that feedback prompted revisions); find any remaining gaps; and discover any unintended consequences or interpretations that may have been created because of the changes made.

The revised standard was discussed at the CAC's training day in March 2017 and further comment on was invited from:

- 56 people who made a submission to REAA in the first consultation (excluding anonymous submissions)
- NZ Law Society
- Ministry of Justice
- Real Estate Institute of New Zealand.

The purpose of the additional consultation was to:

- seek feedback on the more significant changes made to the draft Standard
- test/receive feedback on a range of other smaller language revisions and re-ordering of aspects of the draft Standard
- identify any gaps or areas of remaining uncertainty
- test the formatting and presentation changes.

The general themes that came out of the submission process are discussed in this report.

Consultation outcome

The consultation processes were invaluable. They showed there is considerable support for REAA's decision to address supervision and lift industry performance.

REAA was able to refine the Standard to address the points raised by submitters. There was nothing raised during the consultation process that justified or warranted a complete revision, a significant change in policy direction, or substantial re-consultation.

First round of consultation

The consultation process revealed considerable support for development of the Standard and its content. REAA received helpful feedback on areas where the Standard could provide clearer expectations and suggestions for the implementation.

Key observations from the feedback:

- few submitters suggested that operational impediments would present problems in implementing the Standard
- REAA needed to give further thought about the workability of an assistant; and about the assignment or delegation of supervisor responsibility in certain circumstances
- REAA needed to further consider remote supervision and the ratios of supervisor to supervisees
- some submitters sought clear guidance, including detailed prescription, from REAA (eg, supervision ratios) but this wasn't possible in the context of a principles-based standard
- many submitters had negative impressions of remote supervision, considering it unnecessarily risky, but this appeared to be driven by the submitter's own perception of what 'remote'

means and looks like. The Standard sets more performance-based expectations to address the concerns of submitters, without becoming overly prescriptive

- there were several creative and innovative suggestions for implementing aspects of the Standard.

Some of the changes made to the draft Standard as a result of the feedback included:

- confirming that it is acceptable for supervisors to use experienced salespersons to assist with oversight of day-to-day activities of salespersons
- clarification of the scope of application of the Standard – which includes residential, leasing and commercial real estate agency work
- setting a default expectation that a supervisor reviews all agreements, though the timing and degree of review needs to be tailored to the circumstances
- additional clarification that remote supervision is acceptable, but there is an expectation that careful planning and contingencies are required
- listing the factors identified as relevant to deciding whether a supervisor can exercise sufficient direction and control over a salesperson
- identifying practical measures that a supervisor should take when supervising new and/or inexperienced salespersons.

Ultimately, the feedback did not result in any major shift in REAA's approach or thinking. The look and feel of the draft Standard changed significantly from the original version with formatting changes in response to feedback to improve its readability and navigability.

Second round of consultation

The additional round of consultation again revealed general support for the draft Standard, and the changes made in response to the first round of consultation.

Submissions raising concerns about the Standard were consistent with similar points raised in the earlier round of consultation. There were no new issues or feedback that suggested REAA should significantly change its previous views and decisions.

Following the second round of consultation, these minor changes were made to the draft Standard:

- a small number of editorial changes
- additional definitions (for example for 'line manager'), and clarification footnotes
- further guidance confirming that a salesperson may have multiple supervisors over time.

Nature and quantity of feedback

The number of people who responded to the consultation was very small. This could be because:

- the proposed standard was generally accepted
- people found nothing objectionable in the proposed Standard to respond to
- there was a lack of understanding of the proposed standard and its impact on those who were invited to make a submission
- there was a communication and/or engagement failure in respect of the consultation.

The industry had considerable opportunity to take part in the consultation. Given the wide publication of the draft standard and the range of methods used to encourage and enable input, REAA's engagement strategy and communication are not considered a factor in the low submission rate.

There was clear and easy-to-follow communication around the consultation and intent of the proposed standard. REAA considers it unlikely that the low rate of submissions was due to poor understanding of the proposal.

REAA inferred that the small number of submissions indicated there was nothing in the Standard that was overwhelmingly alarming or unsatisfactory. The Standard was not considered to impose unreasonable regulatory burden or financial impact on industry. REAA believes that if either of those situations had been an issue, it was likely more feedback would have been received.

It is more likely than not that the limited feedback received was an indication of a broad understanding and acceptance of the need for a professional standard to guide industry about what is expected of them when undertaking supervision.

Key themes from submissions

REAA considered several issues and points raised by multiple submitters during both rounds of consultation. Here are the key themes and REAA's considerations:

Themes	REAA's considerations
<p>Business model and structures</p> <p>There were concerns about the impact of the Standard on the way agents and agencies conduct their business.</p>	<p><i>The Standard does not 'outlaw' or restrict any business model, or impose business structures. Agents and agencies are able to carry out their business as they see fit, as long as they meet their obligations under the Act and Rules.</i></p> <p><i>The nature of the Standard, being primarily principles-based, is intended to accommodate the various business models and structures that exist in industry. REAA understands that no one size fits all. For that reason, the Standard places the onus on agents and agencies to exercise judgment and make decisions about supervision that are tailored to their circumstances and meet their needs.</i></p>
<p>Supervisor responsibility</p> <p>There was concern from a small number of submitters about the level of responsibility that the Standard places on the shoulders of supervisors. Some suggested that it is unfair that supervisors should be held responsible for mistakes of experienced salespersons, particularly because the Standard contemplates more experienced salespersons receiving less supervision.</p> <p>A small number of submitters also expressed the view that the Standard would discourage people from taking on supervisor roles because they would be unwilling to take on the responsibility imposed by the Standard.</p>	<p><i>Supervisors act as an important check and balance on salespersons. The Standard imposes no further responsibility than already exists under section 50 of the Act.</i></p> <p><i>The positions expressed in the Standard about the onus and responsibility sitting with supervisors simply reflects the legislative position; REAA has no discretion to alter this. In any event, REAA considers it is entirely appropriate for supervisors to have ultimate responsibility because they are the primary line of defence for preventing, identifying, and resolving mistakes and errors that may be made by the salesperson.</i></p>

Principles-based approach

REAA received many positive comments, but there was considerable feedback about the lack of prescription in the draft Standard. A key criticism was that the Standard provided no more clarity than the Act or Rules.

Several submitters commented that while they considered the Standard practical and reasonable, they would have liked more clarity and more precision about what would be expected of supervisors and what acceptable supervision would look like when conducted remotely. Some comments suggested that the Standard should be expressed in more mandatory terms. A number of submitters noted that, while the Standard was practical and reasonable, some areas remained 'grey' and open to interpretation. They felt this left them open to uncertainty in the context of a complaints process.

In general, the Standard identifies principles to guide supervision. However, it does contain a small number of expectations that are expressed as instructions or mandatory requirements. REAA considers that it has struck the right balance.

It is impractical to be more prescriptive. The Standard will apply to a range of people, and organisations of varied sizes, structures, and in various locations. The Standard needs to take account of, and allow for, a range of variables and circumstances. To that end, it must be flexible; the underlying message being that supervision must be tailored to each case.

The high-level expectations covered in the Standard appear to be well understood. Many of the submissions acknowledged and endorsed the principle-based nature of the proposed standard. They noted that the lack of prescription is desirable to allow the supervision arrangement to be formulated and tailored to meet the needs of the particular case. It is also important to note that the Standard cannot purport to go beyond section 50 of the Act and impose obligations that are without basis (such as banning remote supervision).

However, the Standard does more than simply restate the obligation under section 50 of the Act (as well as the relevant rules). The Standard expresses REAA's expectations of the various components of supervision, and identifies the matters that supervisors, and salespersons under supervision, should consider when setting up and carrying out supervision arrangements.

REAA determined that it would be unworkable and impractical to have a standard that expresses detailed and prescriptive rules for supervision. The Standard does not, and cannot, consider every possible situation or variable that might be relevant to deciding how supervision should be carried out.

The Standard simply sets out to explain the 'what'; what the supervision arrangement should incorporate (whether it is provision for remote supervision, or anticipating how things will work when the supervisor is unavailable). In addition it explains the 'how'; how the supervision arrangement works in practice is for the supervisor to decide in the context of the salesperson being supervised, taking account of their specific circumstances and any other relevant factors.

REAA's intends to develop templates and additional guidance material that will address some of the remaining industry concerns in this space. This material will supplement the practical use of the Standard. These tools will assist compliance and give guidance on the content that REAA would expect to see in various documents eg, a supervision plan.

As CAC and Tribunal decisions develop, REAA will also be able to give further guidance on acceptable means of compliance in certain contexts.

<p>Operational barriers</p> <p>During the first round of consultation, there was feedback about the operational and other barriers that industry expected to arise because of the Standard.</p>	<p><i>Time and costs of compliance were raised by some submitters. While the feedback was useful to REAA, ultimately the obligation to supervise already exists. The Standard does not create any new obligations; in fact it aims to clarify the various components of supervision that should already be in place. To that end, REAA did not discover any unreasonable, unintended, or otherwise significant operational barriers that would prevent agents or agencies from implementing the Standard. Nor did any of the identified barriers provide cause to change the underlying expectations set out in the Standard.</i></p>
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Ratios of salespersons to supervisors

The first round of consultation provided a range of views on whether the Standard should set a maximum number of salespersons to each supervisor.

Most submissions supported a set ratio, but there was also a desire for allowance, scaling, or a tiered framework. This would take account of the differing levels of experience of supervisees and the circumstances of different agency eg, size.

REAA opted not to specify a permissible or maximum ratio number in the Standard. This is because for some agents or agencies it may be one, while in other cases it may be 10 or more. REAA considered that there were too many variables affecting the decision.

REAA considered that the number of salespersons that could be supervised by one supervisor would be influenced by:

- *the experience, training, and ability of the salespeople and supervisor*
- *the size of the office or organisation*
- *the broader experience levels of the office or organisation*
- *the procedures and systems the agency has in place*
- *the volume of activity/business the office is dealing with*
- *whether the supervisor was selling as well*
- *the complexity of the transactions that the salespersons were involved in (for example, off-the-plans apartments, and properties managed by Body Corporates)*

The availability of other supervisors, and experienced and competent salespersons, would also be relevant.

While it was acknowledged that a maximum ratio may provide some certainty, the industry's desire to have some flexibility to determine the right number in specific cases indicated that a set ratio (or ratios) was not workable.

The Standard therefore places the onus on supervisors to assess whether they can supervise multiple salespersons. They will base this decision on their need to provide active supervision and to exercise sufficient direction and control. The Standard affirms that supervisors should exercise their own judgment about whether they are capable of supervising multiple salespersons, and if so, how many salespersons they can appropriately and effectively supervise and manage at any one time. It is a question of workload; supervisors are in the best position to make decisions about their capacity to supervise multiple persons, bearing in mind their various experience levels and circumstances.

<p>Remote supervision</p> <p>Considerable feedback was received on remote supervision. There were two groups of responses; those who were against any form of remote supervision, and those who believe that remote supervision is appropriate if there were conditions and restrictions around it.</p> <p>One of the key issues identified from the first round of consultation was the variation in the understanding of what remote supervision means. This varied understanding naturally coloured submitters' perception of the likely issues with remote supervision.</p>	<p><i>REAA carefully considered the feedback.</i></p> <p><i>The Act does not prohibit or restrict remote supervision. This was a key consideration for REAA.</i></p> <p><i>While REAA acknowledges there are practical challenges with remote supervision, there may be circumstances where it is entirely workable and appropriate. In some cases it may be that remote supervision is not appropriate, but only for a certain period of time (for example with an inexperienced salesperson in their first six months). REAA's position is that where supervisors and salespersons would like a remote supervision arrangement, they simply need to put more effort into discussing and detailing how the arrangement will work, and ensure regular and effective communication. Asking other supervisors and experienced salespersons to help less experienced salespersons is also encouraged.</i></p> <p><i>Supervision that is conducted primarily on a remote basis, or at a geographical distance, can be as effective as a supervision arrangement where the supervisor and salesperson are present in the same location. What matters is the effectiveness of the supervision arrangement, and how regular communication is achieved.</i></p> <p><i>The Standard does not, and cannot, prescribe how remote supervision should work or what it should look like in any particular case. However, it does provide a level of guidance on the matters that supervisors and salespersons considering any form of remote supervision should consider when developing and carrying out the supervision arrangement, and whether the supervisor can exercise sufficient direction and control.</i></p>
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<p>Checking agreements</p> <p>The submissions revealed three key schools of thought on the issue of supervisors checking agreements:</p> <ul style="list-style-type: none"> • agreements should always be checked • in some circumstance (it may be acceptable not to check (eg, absence, or salesperson experience) • if it is prepared by a solicitor, checking is never necessary. <p>The clear message from the feedback was that the experience and competence of salespersons should dictate whether pre-signature checking is required.</p>	<p><i>REAA considered that the default expectation should be to check all agreements. The nature and degree of checking would be influenced by the salesperson’s experience and competence. This echoes the sentiment of the feedback. As the supervisor carries ultimate responsibility for the compliance and quality of any agreement drafted by a salesperson under their supervision, it was determined that the supervisor should make the judgment about the extent of review required in a particular case. As a salesperson gains more experience, the nature, timing, and extent of the review required will change; the Standard acknowledges and accommodates this.</i></p> <p><i>There was some misunderstanding among submitters about the prohibition on all new salespersons (with less than six months’ experience in real estate agency work) from preparing sale and purchase agreements. This restriction is imposed by the Lawyers and Conveyances Act 2006. It is not something that REAA has discretion over. This is a legislative requirement, and this aspect of the Standard is therefore expressed in a prescriptive way, rather than being principle-based.</i></p>
<p>Unavailability of supervisors</p> <p>REAA received several submissions raising concerns about the workability of the Standard on occasions when the supervisor is not available.</p> <p>The concern was that in small businesses with only one supervisor, the supervisor would effectively be unable to go on holiday, or even have a break.</p>	<p><i>Temporary unavailability of a supervisor is already likely to occur. Agents and agencies have always been required to ensure proper supervision of salespersons, and to that end also deal with instances of supervisor unavailability. The Standard does not create any new obligation. It simply reminds agents and agencies that supervisor unavailability is something that must be managed.</i></p> <p><i>REAA’s position is that in most circumstances unavailability of a supervisor is foreseeable and can be planned for (for example, a holiday, or other event). Even temporary or sudden unavailability are events that agents and agencies should already have contingencies and plans in place for.</i></p> <p><i>Agents and agencies need to have back-up to manage situations of sudden or unexpected unavailability of supervisors. It is not acceptable (or lawful) to suspend the overarching obligation to properly supervise and manage salespersons because of supervisor unavailability.</i></p>

<p>Identification of supervisors to clients and customers</p> <p>In the first round of consultation, submitters were asked to comment on whether they thought it was desirable for the name and location of a salesperson’s supervisor to be made known to the salesperson’s clients and potential customers.</p> <p>Feedback indicated that many agents and agencies already did this.</p> <p>Some submitters considered that it is unnecessary, and a few also believed it would be detrimental to the development of the salesperson.</p> <p>A number of submitters supported a mandatory requirement to disclose the name of the supervisor, with some suggesting details should be published on REAA’s website.</p>	<p><i>REAA decided that it was not necessary to express an expectation on this point in the Standard. REAA considered that because the name of the agent and agency was already detailed on the agency agreement it was unnecessary to mandate the identification of the supervisor to a client or potential customer. If a client or potential customer raised concerns with the agent or their agency, it would be the client’s responsibility to raise those issues with the salesperson’s supervisor (assuming the agent was not also the salesperson’s supervisor).</i></p> <p><i>REAA considered that there was no evidence to suggest that disclosure of the fact that a salesperson was under supervision, and the name of the supervisor, would lift compliance levels.</i></p>
<p>Focus of the standard</p> <p>Several submitters expressed views that the Standard only focused on residential sales and did not cover commercial and industrial sales and leasing.</p>	<p><i>The Standard was amended in response to clearly identify the licensees that it applies to (refer paragraph 3). Paragraph 22 of the Standard also makes it clear that the Standard applies to both residential property transactions as well as agreement for the sale and purchase of any interest in land or of the goodwill of a business or of chattels.</i></p>

Final comment

The Standard has been developed and revised with the assistance of industry.

This standard is expected to evolve as agents and agencies operationalise it, complaints are considered, and the industry becomes more familiar with it.

REAA believes it has taken the right approach in framing its expectations in the Standard.

REAA acknowledges that there will be those in industry who support this Standard and some who will have reservations. As a new tool in the regulatory tool box, it is incumbent on REAA and the industry to give the Standard an opportunity to imbed itself in the professional culture of the industry. Of course, if putting the Standard into practice reveals that REAA needs to reflect and review aspects of it, we will do that.

REAA intends to supplement the Standard with guidance and training material.

REAA appreciates the industry's support in developing this first professional standard.

Margaret Steel
Regulatory Services Manager

June 2017