

Real Estate

Continuing Professional Development



Communication: channels and documentation

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Contents

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Learning objectives

At the end of this topic, you will be able to:

- describe research results on licensee communication with consumers
- explain oral, non-verbal and written communication and how they apply to real estate agency work
- describe key considerations in electronic communication with consumers
- describe the benefits of using information from settled.govt.nz in communication with consumers
- explain requirements for communication throughout the real estate transaction
- explain requirements for contractual documentation and record keeping.

Terms used in this guide

In this guide, we will use various terms related to real estate agency work and complaints processes. This table will explain key terms

Term/abbreviation	Notes
CAC	This abbreviation stands for the Complaints Assessment Committee.
Client	A client is a person on whose behalf an agent carries out real estate agency work under a signed agreement. In this guide, we will consider that the agency has a client relationship with the seller and, therefore, that seller is their 'client', and any buyers or potential buyers are 'customers'.
Code of Conduct	We will refer to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 as the 'Code of Conduct'.
Consumer	In the context of this guide, the word 'consumer' refers to buyers and sellers and potential buyers and sellers in the real estate sale and purchase process.
Customer	A customer is a person who is a party or a potential party to a transaction and excludes a client or potential client (as defined in rule 4.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012). The meaning of 'customer' depends on with whom the agency has a client relationship.

Disciplinary Tribunal	We will refer to the Real Estate Agents Disciplinary Tribunal as the Disciplinary Tribunal.
Purchaser	The person buying the property (sometimes referred to as the 'buyer')
REA	This abbreviation stands for the Real Estate Authority.
Vendor	The person selling the property (sometimes referred to as the 'seller')

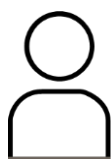
Research results: an overview

Each year the Real Estate Authority (REA) commissions Nielsen to conduct research about the real estate industry.

In 2018, the research included a survey of 602 people who had bought, or sold or tried to buy or sell, residential real estate in the previous 12 months.

The survey asked questions about the real estate process and associated perceptions of the real estate agent involved.

Respondents were asked to rate the last real estate agent (licensee) they worked with when they bought, sold, or made or received an offer.

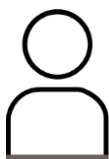


Respondents who said the agent (licensee) was **excellent or very good** at providing the information they needed, tended to say the licensee was knowledgeable, answered questions and went through information with them.

52% of respondents rated agents 4/5 or 5/5 for providing information

Comments from these respondents included:

- They interacted at every stage and kept us informed of the sale process (rated excellent)
- My real estate agent provided me with a lot of information, via emails, websites and papers/pamphlets (rated very good)
- Our estate agent was very quick to answer any of our queries and gave us additional information that she thought applied given the nature of our query and that we were first-time buyers (rated excellent)
- We went back several times with questions. Those that he couldn't answer immediately he researched and came back to us with the answers (rated very good)

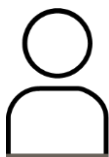


Respondents who said the agent (licensee) was good at providing the information they needed, tended to say the licensee was not knowledgeable, only provided them with the information that was necessary and did not go above and beyond.

26% of respondents rated agents 3/5 for providing information

Comments from these respondents included:

- I thought she was good at her job and related well. She was a bit distracted though as had a lot on the go, and sometimes I had to chase her (rated good)
- I feel like more information came from my parents, who have previously bought a house (and who helped me buy this one) than the real estate agent (rated good)
- There were a few things I think he assumed we'd know, and we ended up needing answers or extra clarification. But he was always good about providing the info when we requested it (rated good)



Respondents who gave low scores were asked what the real estate agent would need to do differently or improve on, for them to be more likely to recommend them.

Responses included:

- Be more open and transparent
- Be more approachable and informative
- Be more supportive
- Communicate better and have more knowledge and experience

Respondents who had problems or issues

18% of respondents stated they had an issue when they bought or sold or tried to buy or sell property in the last 12 months. Some of the issues included:

- Feeling pressured to make quick decisions
- Having difficulty understanding the price or value of the property
- The agent not communicating well

Issues were similar across (all) the segments; however, investor buyers were less likely to have had an issue (7%).

REA / Nielsen Annual Perceptions research July 2018

The REA research highlighted important findings about levels of communication.

18% of respondents had an issue with their real estate agent when involved in a residential real estate transaction over the last 12 months.



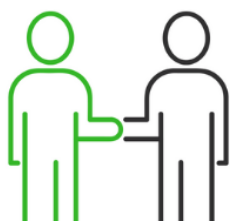
Of the 18%, the most common serious issues encountered during real estate transactions were **communication** -based.

31% worked with a real estate agent who didn't communicate well

31% received poor service from an agent

24% felt that their agent was too pushy

Real estate agents were involved in **72%** of the most serious issues.



dishonesty and ethics

was considered the most serious issue by buyers/sellers.

What are real estate consumers saying?

Note

Throughout this topic where we refer to clients, we are referring to vendors or lessors; and where we refer to customers, we are referring to purchasers or lessees.

The exception is when a purchaser or lessee is paying you (i.e. you are in an agency relationship with the purchaser or lessee). This would mean the purchaser or lessee is your client, and the vendor or lessor is your customer.

The most common issue among customers was a feeling that the licensee did not communicate well throughout the transaction process.

Another recurring problem identified in the survey was a lack of confidence and trust in the licensee they were working with. Many respondents who cited communication as an issue felt they could not trust what the licensee was telling them and that they (the client or customer) needed to make their own notes following oral communication or attempt to conduct all communication via email to ensure they had a written record. Some respondents also reported finding it necessary to have a support person with them when dealing with a licensee.

By comparison, positive comments made by buyers and sellers who recommended their licensees include:

- He seemed to genuinely care about our situation and took the time to listen properly to what we wanted and were looking for
- She was very open and forthcoming about the property and helped with issues when they arose
- His awesome communication, and his willingness to help and go above and beyond to understand our situation and what we were looking for in-house and in budget
- She was so accommodating to our time parameters, never tried to push us to make a decision, or overly try and sell the properties we viewed (50 at least)

Some buyers and sellers suggested recommendations for how licensees could improve. These include:

- More openness, honesty, build the trust relationship instead of being so pushy for the sale
- Be a little less involved with talk about the market and property values, and more involved with promoting the actual property. That approach may be appropriate for an investment type property, or even a first home type of property, but not so relevant with a higher end family home
- Be more attentive and show signs of interest in our needs and not take it for granted that we will buy or else we will miss out

Conclusions from the research about communication

18% of respondents had an issue when buying, selling, or attempting to buy or sell. Of these issues, 31% involved an agent that didn't communicate well.

Conversely, we can say that 82% did not have an issue with communication when buying, selling, or attempting to buy or sell.

There is an opportunity for the real estate industry to address methods and means of communication to improve areas of concern and improve public perception of the industry.

When it comes to communication, any areas where there is a misunderstanding or lack of clarity are areas for concern. They illustrate the importance of **clear and effective communication** throughout all aspects of real estate agency work.

Poor communication negatively affects one person's experience in a real estate transaction, but it can flow on to impact the perception of the industry through disparaging comments and complaints.

Real estate consumers who feel they are not communicated with in a transparent and respectful manner are likely to share these negative feelings with family and friends. They are also unlikely to use the same real estate agent again or to recommend them to others.

Key Point

Real estate licensees who have effective communication skills and demonstrate transparency while carrying out real estate agency work are more likely to receive repeat business, referrals, and recommendations.

Interpersonal communication

Definition

Effective communication is a process by which information is exchanged between people through the use of a commonly understood system. It's a two-way process where all parties involved transmit information between each other to achieve mutual understanding.

Effective communication is only achieved when mutual understanding is achieved.

In John C Maxwell's book, "The 21 Indispensable Qualities of a Leader"¹, four basic truths for effective communication are outlined, which are:

1. Simplify your message – the key to getting your message across is to keep it simple; keep it clear; keep it concise
2. See the person – "people believe in great communicators because great communicators believe in people"
3. Show the truth – credibility precedes great communication
4. Seek a response – every time you speak you should expect a response; an action of some kind

Licensees generally value the opportunity to work with people; that's why they're working in real estate – it's a high touch industry [an industry that is characterised by the need for close relationships with clients and customers].

¹ Maxwell, J.C. (1999). *The 21 Indispensable Qualities of a Leader*. Nashville. Thomas Nelson Publishers.

Three forms of communication

There are three main forms of communication, oral, non-verbal and written.

Oral communication

The core aim of effective oral (verbal) communication is to actively listen to what is being said and try to understand. And in turn, to speak clearly and concisely to be understood. Then to seek clarity to ensure mutual understanding has occurred.



Licensees take part in countless oral dialogues every day when carrying out real estate agency work. These dialogues include phone and face-to-face conversations.

Licensees may spend their days:

- Talking with colleagues, e.g. about current listings, potential new listings, recent sales, leases listings, or the real estate market. These conversations will often include 'in-house' jargon or acronyms that a general member of the public may not understand.
- Talking with clients or prospective clients about their property, space, or business listing. These conversations may also involve giving market feedback and explaining real estate 'speak' that the client may or may not initially understand.
- Talking with customers or prospective customers about their real estate needs, for example at open homes or over the phone. These conversations often involve using real estate 'speak' that the customer may or may not initially understand.

That's where the **four truths** above become essential:

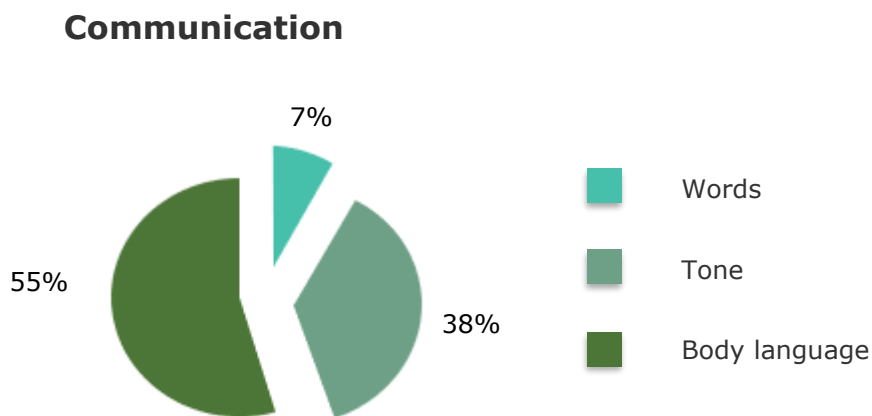
1. Simplify your message
2. See the person
3. Show the truth
4. Genuinely seek a response to clarify that the listener has fully understood what has been said.

Nonverbal communication

Nonverbal communication is expressed through *implicit* messages that are given, either intentionally or unintentionally, through an individual's behaviour and mannerisms.

Nonverbal behaviour generally enhances aspects of a verbal message – whether positively or negatively. This includes a person's tone of voice, facial expressions, eye contact, body language and posture, personal gestures, as well as physical proximity to the person or people you are communicating with.

Research suggests that only 7% of meaning is conveyed through oral communication, 38% through the tone and inflexion of a person’s voice, and the remaining 55% through body language (non-verbal).



Source: Allison Baden-Clay, 2011

Each time we communicate, half our *message* is conveyed through body language.

Note:

“The single biggest problem in communication is the illusion that it has taken place.”
– George Bernard Shaw.

Written communication

One of the key benefits of written communication is that it becomes documented evidence. Oral communication can be easily forgotten or misunderstood. When words are written, ideally two things will happen:

1. Information is clearly stated
2. Information can be read, re-read, clarified, and verified

A prudent licensee should, therefore, ensure that important oral communication is followed up with written confirmation. Additionally, some information *must* be communicated in writing (see, for example, rules 10.2 or 10.6).

Before writing a communication, it is important to consider the audience you are trying to communicate with and the appropriate format of the information.

You need to be careful the reader will understand any industry-specific terminology or jargon. You will also need to think about how to best to set out the information, so it is easy to read and understand. This often means keeping sentences short, breaking information into paragraphs, and making sure there is plenty of white space on the page or email. Take care to ensure grammar, spelling and punctuation is correct so the reader can focus on the content without being distracted by poorly constructed sentences and avoidable errors.

A significant advantage of written communication is the ability to check the content for accuracy **before** sending it. It can be a good idea to have someone else proofread your work. This is especially important when you are trying to communicate complicated or difficult information and need to make sure it can't be misinterpreted.



Questions – Communication exercise

Interpersonal skills when carrying out real estate agency work

Select the relevant communication skills you will need to carry out each type of real estate agency work:

Real estate agency work	Oral	Non-verbal	Written
Prospecting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pre-listing/networking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appraisals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Listing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Agency agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing/advertising	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Viewings/open homes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Offers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sale and purchase/lease agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Negotiations/closing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
After-sales/lease service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Communication within an agency

Real estate agency work takes place in a constantly changing environment with multiple listings and associated communications evolving concurrently.

The competent licensee should try to manage this dynamic work environment, making sure all communication is in accordance with their legal obligations. For example, compliance with fiduciary obligations to the licensee’s client (rule 6.1); acting in good faith and dealing fairly with all parties (rule 6.2); not misleading a customer or client, nor providing false information, nor withholding information that should by law or in fairness be provided to a customer or client (rule 6.4).

Policies and procedures

Each agency has its own written in-house policies and procedures and associated documentation for carrying out real estate agency work. These policies and procedures are designed to set clear and transparent guidelines for all licensees who work in or for the agency. These policies and procedures often set a higher standard than that set by law.

These requirements sit alongside the Real Estate Agents Act 2008, and associated regulations, Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, legislation and other legal requirements relevant to real estate agency work.

Occasionally, licensees may disagree with agency policies and procedures. If a licensee disagrees with some aspect of agency policy, they should raise their concerns with the branch manager or supervising agent. However, in all circumstances, licensees are required to adhere to those policies and procedures and are not at liberty to proceed with real estate agency work which is, in any way, in conflict with agency policies and procedures.

Policies, procedures and associated documentation provide clear boundaries for processes and lines of communication within the agency to ensure all licensees work collaboratively.

Compliance with in-house policies and procedures is essential when carrying out real estate agency work.



Questions

Answer the following questions by selecting the correct answers.

1. Licensees are entitled to disregard agency policies and procedures they feel are inappropriate when carrying out real estate agency work.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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2. Policies, procedures, and associated documentation provide clear boundaries for processes and lines of communication within the agency to ensure all licensees work consistently.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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Read the following case study and answer the questions that follow.

Case study 1

A complaint was made against a licensed salesperson (Listing Licensee) and an agency by prospective purchasers who tried to purchase a property at auction that they share a cross lease with. They were unsuccessful at auction.

Six months later the property was listed for sale with the Agency (branch X), and Licensee 1 sent them details of the listing but did not follow up with the Complainant.

The Complainants subsequently viewed the property with another licensee (Licensee A) from branch X (not Licensee 1 or the Listing Licensee) and wanted to make an offer through them. The Complainants said the Listing Licensee was made aware of their interest by Licensee A, as well as directly to the Listing Licensee when the Complainants attended an open home at the property run by the Listing Licensee.

The Complainants were told by Licensee A there was a multi-offer situation on the property and that they should prepare their offer. Licensee A assured them their offer would be presented.

The Complainants later learned the Listing Licensee had contacted Licensee 1 to get him to re-submit an offer that a previous interested buyer had made, which was accepted.

At no time throughout the negotiation stage did the Listing Licensee inform Licensee 1 another offer was being prepared by Licensee A and that, in fact, it was in all fairness, a multi-offer scenario.

The Complainants are concerned their offer was not presented to the vendor.

Complaint number: C06620

You can read about this complaint and decision in the REA decisions database at rea.govt.nz.



Question

3. What sections of the Act or Rules, if any, did the licensee breach?

Note the following comments from the Committee:

- [para 3.6.] "The Committee was provided with a copy of the Agency's multi-offer rule, which states - "At any stage of negotiations, as soon as a second customer has a written offer, negotiations with the first party MUST stop and the multiple offer rules commence. Salespeople MUST immediately notify; in the first instance, the listing branch manager".
- [para 3.7.] "It [multi-offer] further goes on to say - "It is noted the final decision as to whether or not to proceed with the multiple offer process remains with the client. It is the responsibility of the manager to give the client that option".
- [para 3.8.] "It is the Committee's opinion that in accordance with the above, the proper course of action for [the] Listing Licensee to take on receipt of a potential offer from the Complainants' licensee was to inform her branch manager immediately. She did not, which leaves the Committee under no doubt her actions were unsatisfactory".

Agency property files

The listing licensee is required to prepare a property file for all new listings. This file contains important documentation about the subject property and vendors/lessors. It is essential this file is accurately maintained throughout the duration of the listing, as it is the major 'source' file for all relevant information. This includes²:

- Vendor(s)/Lessor(s) personal details (apart from confidential personal information)
- Vendor(s)/Lessor(s) contact information
 - Including the preferred method of communication (e.g. phone/mobile, text, email)
- Property information
- Written appraisal

Note: Any confidential personal information must be stored securely in compliance with the AML/CFT Act 2009, Privacy Act 2020 and in compliance with rules 9.16, 9.17 and 9.18.

Key Point

Each licensee should establish clear expectations with office staff and colleagues around receiving calls at the office from prospective clients, clients, prospective customers, and customers to ensure messages are passed on efficiently and effectively.

When a licensee is out on the road and unable to respond to requests immediately, it is important that trackable notes are recorded and maintained in the relevant property file for reference.

Accessibility to agency property files

All property-related information should be complete and accurately detailed within the property file. The file should be available to any licensee within the agency who is authorised to offer the property to a prospective purchaser/lessee; or who works in association with the listing licensee in their business unit. This will ensure the transfer of material information between licensees within the same agency.

² NOTE: personal information as required under AML/CFT CDD requirements is not included in this section

Oral communication with clients and customers

We will now look at oral communication while carrying out real estate agency work.

Licensees will have numerous conversations every day, either face to face or on the phone. It is important that licensees conduct themselves in a professional manner, aware of their oral and nonverbal messages.

Remember 7% of meaning is conveyed through oral communication (**what** is spoken), 38% through the tone and inflexion of a person's voice (**how** it is spoken), and the remaining 55% through non-verbal communication (what is **not spoken** but implicit within a person's behaviour).

Here are some general points to consider with oral communication:

- **Documenting oral conversations with prospective clients/clients**
 A prudent licensee should make sure that any information that may be material to a client is fully disclosed. All oral disclosures **should** always be followed up with written clarification and verification by the licensee concerned (for example **email**), along with a corresponding **diary note**, or client management system entry for further reference. This ensures:

 - a) The information has been conveyed clearly and concisely
 - b) There is mutual understanding by all parties concerned

- **Documenting conversations with customers or prospective customers**
 A prudent licensee should demonstrate knowledge and competence regarding the property, space or business they are marketing. They should communicate specific information to prospective purchasers that is clearly contained within printed marketing or advertising material. Any additional non-documented property specific information (e.g. sensitive issues, issues beyond the boundary) provided to prospective purchasers or lessees in casual conversation at viewings or open homes **should** always be followed up with written clarification and verification by the licensee concerned (for example by **email**), along with a corresponding note in a diary or client management system for further reference to ensure:

 - a) The information has been conveyed clearly and concisely
 - b) There is mutual understanding by all parties concerned

- **Oral conversations where multiple clients are concerned**
 When listing a property, space or business that is owned by multiple clients (for example, two or more individuals, trustees, directors, executors) oral conversations with one of the parties to the agency agreement poses a significant risk to the licensee. It is imperative that ALL parties in the agency agreement are provided with the same information throughout the agency period. It is best that this information is conveyed in writing (for example, in a group email). Relying on one party to convey material information to another party should be discouraged. Written consent to disclose information, either before or after the agency agreement is concluded, must contain ALL signatories.

- **Oral conversations where multiple prospective customers or customers are concerned**

When marketing a property, space or business where the prospective customers or customers are multiple individuals (for example, two or more individuals, trustees, directors, executors), conversations with only one of the parties poses a significant risk to the licensee. It is imperative that ALL parties are provided with the same information throughout the transaction, with written proof clearly documented (for example, diary note; group email to all parties).

- **Taking calls while out of the office**

Being 'on-call' 24/7 is a common challenge for licensees and taking phone calls while out of the office is not unusual. Lengthy conversations should be avoided, keeping conversations with customers to a minimum, especially when you are unable to make notes during the conversation. It is also important to keep a written record of significant verbal conversations to avoid misunderstandings; careful consideration should be given to determine if a phone call requires a follow-up email.

- **Automated message**

Make sure you have a polite, concise up-to-date automated message on your phone.

Quote:

"Honest communication is built on truth and integrity, and upon respect of the one for the other." – Benjamin E. Mays.

Read the following case study and answer the questions that follow.

Case study 2

The purchaser of a high-end residential property (final purchase price of \$7.9 million), who spoke English as a foreign language, made a complaint to REA (with the help of a friend – Mr N) about the conduct of Licensee 1 and an Agent Licensee involved in the transaction.

Details of the complaint in relation to Licensee 1 include:

- Misrepresentation of the extent of defects and associated costs to rectify the defects of the property
 - The Complainant was told the house had 'no major problems, just [needed] simple repairs'
 - The Complainant was told the cost to rectify was 'minimal' and needed about \$200,000 worth of repairs

- After an unconditional agreement was signed, Licensee 1 presented the Complainant with a building report from a previous potential purchaser (who Licensee 1 provided real estate agency work for) which indicated a cost of \$1 million to rectify identified defects
- Licensee 1 arranged for the Complainant to undertake a house inspection at the last minute and the complainant's building inspection report estimated a total cost to remediate defects at approximately \$700,000 excluding GST
- Failure to recommend the Complainant should seek legal advice before signing the agreement for sale and purchase
- Misrepresentation of the terms of an unconditional offer made by the Complainant to purchase the property:
 - Throughout the negotiation process, the Complainant was supported by his friend, Mr N. The initial offer included a solicitor's approval clause, LIM, finance and building report conditions
 - After further negotiations around price, the Complainant instructed the Licensee to present an offer conditional only on solicitor's approval
 - Mr N requested the Licensee 1 include a condition on a building report
- Deprived the Complainant of the opportunity to requisition the title for the property by introducing the Complainant to a new lawyer
 - Halfway through negotiations Licensee 1 "manipulated" the Complainant to switch lawyers leaving them unable to have the new lawyer check the title

Details of the complaint in relation to the Agent Licensee include:

- Release (disbursement) of the deposit money after being put on notice from the Complainants lawyer that the 'Contract was in dispute and the deposit should not be disbursed'
 - The Agent Licensee took the Agents commission (\$182K)
 - The Agent Licensee disbursed the balance of deposit money to the vendor

Complaint number: C09160

You can read about this complaint and decision in the REA decisions database at rea.govt.nz.



Question

4. What sections of the Act or Rules, if any, did the licensee breach?

In its summary of the case the Committee stated the following:

Licensee 1:

- (a) **Failed to properly explain** to her purchaser the removal of a building report condition from an agreement for sale and purchase resulting in the purchaser believing the agreement still contained a building report condition;
- (b) **Breached her fiduciary duty** to her vendor client when she agreed to hold and destroy a signed and binding agreement for sale and purchase if requested by the purchaser before a stated time the following morning;
- (c) **Misled the purchaser** as to the extent of defects, and cost of rectification, by providing a building report after an unconditional agreement had been signed, by not verifying vendor information about the cost of rectification and by not identifying and obtaining a copy of a further building report, the existence of which had been disclosed to her;
- (d) **Did not advise the purchaser to seek updated legal advice** after a significant change to the agreement relating to the deletion of a building report condition;
- (e) **Engaged in activities which blurred her role** so the purchaser believed or had an expectation she was looking after his interests;
- (f) **Allowed the agreement** for sale and purchase **to become a drafting mess.**

The Committee also made the following comments:

- [para 3.3] Licensee 1 was invited to provide diary notes and any relevant correspondence, such as emails which corroborated her evidence. **She provided no diary notes. The only email correspondence she provided relates to peripheral issues.** There is no correspondence (email or otherwise) providing follow up advice to the Complainant about significant matters. She did not provide any email to support her evidence that she emailed a vendor's building report to the Complainant on 13 June XXXX
- [para 3.4] From this the Committee infers Licensee 1 made **no diary notes about important advice she gave** to the Complainant purchaser **and she did not confirm important advice (which she says she gave) in writing**

Electronic communication with clients and customers

There are many ways to communicate with clients and customers now that we have constant access to technology (for example, smartphones, computers, audio-visual software). While these options make communication quick and easy, they also pose risks.

When communicating electronically, such as by email, text message, or social media, licensees need to be particularly careful what information is being communicated, and how. Electronic communication does not allow for non-verbal cues to be sent and received, so it is important to be aware of the potential for miscommunication to occur when a message is unclear or inconsistent.

Sending electronic messages

Here are some general points to consider when **sending** electronic messages:

- **You won't always know if the recipient has received your message**
If the message is important, make sure you clearly ask for a reply or ask the recipient to acknowledge they have received the message.
- **Electronic messages can be easily misinterpreted**
It can be difficult to write a message that remains clear, without the potential to be misunderstood. It is important to be aware of how the recipient **may** read your message. Write clearly and concisely. Be careful of using casual familiar conversation or humour that may not come across as you intended. This depends largely on the depth of the relationship you have with the recipient. If you specifically need the recipient to do something in response to your message, clearly state this and explain what is required. Try not to include any unnecessary information that could confuse the recipient.
- **Expectations for a prompt response**
Sending electronic messages is an instant form of communication, so people expect their messages will be read and replied to quickly. If your message requires a prompt response, carefully consider which form of electronic communication is most appropriate. You may need to phone the recipient to let them know you have sent a message that needs their urgent attention.

- **Maintain appropriate standards of professionalism**

At all times ensure your message is written in a professional manner, maintaining the same standards of professionalism online as you would in person.

Key point

Maintain the same standards of professionalism online as you would in person.

Receiving electronic messages

Here are some general points to consider when **receiving** electronic messages:

- **Reply promptly**

Attempt to reply to messages promptly. If you need time to respond, for example, to a complicated question, reply to the message promptly to acknowledge you have received the message and will respond to their query as soon as possible, preferably specifying a time period. People feel at ease when they know the message has been received and acknowledged.

- **Responding to aggressive messages**

At times you may receive a strongly worded or aggressive message which causes a negative reaction. Don't respond while you are feeling angry or agitated. Wait and give yourself time talk to a colleague or supervising agent to help work through the issue and write an appropriate professional response.

- Never reply to messages if you have consumed alcohol.

Text messaging

Communicating with clients and customers by text message is easy and efficient as most people carry mobile phones. It allows licensees to communicate directly to the recipient, and in a way that will not disturb customers if they are busy.

Text messaging can be a valuable tool for sending and receiving short and non-sensitive forms of communication; for example, arranging a viewing, arranging a face-to-face meeting to provide market feedback, or acknowledging a text message has been received and a response has been emailed.

However, text messages should not be used as a formal means of communication (for example, for compliance-related matters). Licensees need to ensure the same standards of professionalism are maintained as if speaking in person. If a text message becomes lengthy, careful consideration should be given to using an alternative means of communication (e.g. email).

Note: Save and store any text messages that contain important information (for example, acknowledgement of key data). Some online programmes allow messages to be saved on your computer. Alternatively, you can take a screenshot of the conversation and email it to yourself to file in the relevant property file for future reference.



General guidelines to follow when communicating by text message

1. Only use text message as a means of communication if agreed to by the recipient.

Only communicate with clients and customers by text if they have specifically agreed to this form of communication.

2. Introduce yourself clearly when messaging a client or customer for the first time.

Never assume the recipient has your cell phone number in their list of contacts; clients or customers may not have your number saved. Send a clear introductory text that includes your name and agency e.g. *"Hi, it's Steven Evans (Green Spaces Real Estate). It was great to meet you this morning. Please let me know when you are free to chat and I will call you"*.

3. Only send text messages at reasonable times.

Text messages should primarily be sent during business hours (9 am – 5 pm). However, communicating outside of these times is acceptable with your client's permission (for example, when negotiations are in motion and you need to give a quick update).

4. Don't communicate important, sensitive, or bad news to a client or customer via text message.

This type of information should be given in person. However, you could send a text message to set up a time to meet.

5. Keep your messages brief and professional.

Keep your messages brief, clear, and concise. Make sure you use professional language and avoid slang, jargon, confusing abbreviations, emojis or text speak.

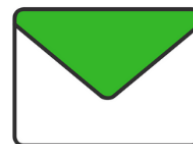
Check your spelling and grammar and always read your text before sending it to check for errors or changes made to words by predictive text.

6. Know when to switch to a different method of communication.

Be aware of when a conversation may be getting too complicated or sensitive for a text message, and switch to a more formal method of communication. If your text conversation contains important information, avoid text messaging and move to a written record of the exchange, for example, email.

Email

Although most people use email every day, it is still important to be mindful when sending emails for business reasons. Licensees must make sure they maintain an appropriate level of professionalism over email.



It has been common practice to use emails for marketing and advertising. The Unsolicited Electronic Messages Act 2007 (UEM Act) establishes clear guidelines around commercial electronic messages (emails) in response to members of the public being inundated with emails. Refer to section 5 below:

5 Meaning of electronic message

- (1) For the purposes of this Act, an electronic message is a message sent—
 - (a) using a telecommunications service; and
 - (b) to an electronic address.
- (2) However, the messages listed in clause 1 of the Schedule are not electronic messages.
- (3) For the purposes of subsection (1), it is immaterial whether—
 - (a) the electronic address exists; or
 - (b) the message reaches its intended destination.

It is a legal requirement to have an individual's consent³ before sending any commercial electronic messages.

Most agencies have policies and procedures in place to ensure compliance with the UEM Act, for example, open home attendees are asked to authorise the use of their email address - refer section 9 below:

9 Unsolicited commercial electronic messages must not be sent

- (1) A person must not send, or cause to be sent, an unsolicited commercial electronic message that has a New Zealand link.

Many organisations now use:

- Social media for marketing and advertising (refer to the section on social media later for further clarity on compliance requirements)
- Email as a more formal method of communication

Writing emails

It is important emails are written in a clear, concise and professional manner, making every effort to avoid misunderstanding or misinterpretation. Think about the email recipient when drafting the message.

³ A commercial electronic message may only be sent if the recipient has consented to receive it. It is strongly advisable to obtain written consent or to keep a record of any verbal consent.
<https://www.dia.govt.nz/Spam-Frequently-Asked-Questions#con>

Guidelines to help with crafting emails

1. Subject line

Make the subject line clear and self-explanatory.

Change the subject line on forwarded and reply emails if the email thread changes.

2. Think about the structure of the email

Many people will stop reading an email after the first paragraph. Therefore, it is important the main message is at the start of the email. Do not hide important information towards the end of the email.

Cover one topic per paragraph.

Give clear instructions if the client needs to do something, such as open an attachment, complete, and sign a form, scan information, etc.

3. Sentences and vocabulary

Use short sentences and paragraphs, and bullet points where appropriate.

Avoid unnecessary words or irrelevant information.

Avoid using CAPITAL LETTERS (can be construed as 'shouting') or all lower case.

Avoid text speak (for example, Plz, txts), abbreviations or acronyms.

4. Email etiquette

Only include or copy-in people who really need to see the email.

Acknowledge receipt of urgent emails promptly. If you are unable to respond in full right away, acknowledge receipt and clarify when you will be able to respond more fully to a specific query.

Ask the recipient to acknowledge they received and understood the email.

5. Proofread before pressing send

Make sure you read through your message **before** you send it. Check for grammatical and typo errors and make sure you have considered what you have written and how the recipient is likely to receive your message.

6. Ensure your email signature is accurate

Make sure your email signature includes your current contact details. Include a legal disclaimer if this is your agency practice.

7. Out-of-Office message

Make sure you set up an out-of-office message if you know you are going to be absent from the office and unable to reply to email messages for part of any business day.

8. When to call or meet in person, instead of using email

You may need to follow up an email with a phone call or visit.

Social media

Social media use has risen with the introduction of smartphones.

You, or your agency, may actively use social media platforms to advertise your services, properties or businesses for sale. They are an effective way to get in contact with people and enhance your real estate business. Make sure that any social media platform which includes reference to real estate agency work complies with section 121 of the Real Estate Agents Act 2008, which states:



121 Agent to display required name information

(1) In this section,—

business, in relation to an agent, means the agent’s business as a real estate agent
required name information, in relation to an agent, means—

- (a) the name of the agent and the fact that the agent is licensed under this Act; and
- (b) if the agent’s business as a real estate agent is not carried on in the agent’s name, the name or style under which that business is carried on.

(2) Every agent must ensure that the required name information is displayed in a prominent place—

- (a) at each office or shop maintained by the agent for the purposes of the business; and
- (b) on every website maintained by the agent for the purposes of the business; and
- (c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and
- (d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business.

(3) The required name information must be capable of being easily read from outside each office or shop maintained by the agent for the purposes of the business.

Social media can also be helpful to broaden your contacts list and reach people that you may not otherwise come across. Social media is now commonly used as a very successful professional channel of communication.

However, you must be prudent when using sites like Facebook or Instagram for work purposes. Even though these platforms are considered more casual, you must remain professional when interacting with clients or prospective clients through these online sites.

A prudent licensee will ensure they maintain professional boundaries between their personal and professional social media channels, i.e. any real estate agency work must be restricted to a professional social media channel and must also comply with section 121 of the REA Act above. Real estate agency policies will require these professional social media channels to be made available for monitoring to ensure compliance.

Many of the same guidelines outlined for text messaging as a licensee also apply to social media. You should only communicate via social media at appropriate times, use clear and professional language, and move conversations to a more formal channel when necessary.

For example, if you post pictures or a short video of one of your listings, you may have prospective customers commenting on the post asking for more information about the property. Instead of replying to the comment on the post with the requested information, it may be more appropriate to ask the prospective customer to send their contact details to you in a private message. This way, you can get in contact with the prospective customer and answer their questions more comprehensively over phone or email.

Note: It would not be appropriate to ask your prospective customer to post their contact details in a comment, as this would make their private details available in the public domain.

It's generally not a good idea to contact a prospective customer through their social media profile unless they have indicated interest in your business or a listing.

Key points

1. When communicating over social media, be aware of what you are saying or doing, and how other people may interpret your actions. Liking a post that is offensive or uninformed can look just as bad as posting something inappropriate yourself.
2. Be careful not to post any private or sensitive information on any social media channel. Consideration must be given to your disclosure and confidentiality obligations regarding your clients and customers.
3. Remember, you're just one post away from the front page of the news.



Questions

Read the following statements and decide whether they are 'True' or 'False'

5. Any non-documented property specific information (for example, sensitive issues, issues beyond the boundary) provided to prospective purchasers in casual conversation at viewings or open homes should always be followed up with written clarification and verification by the licensee concerned (e.g. email), along with a corresponding dairy note for further reference.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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6. At all times ensure your message is scripted in a professional manner, maintaining the same standards of professionalism online as you would in person.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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7. At times you may receive a strongly worded or aggressive message which causes a significant negative reaction. Talk to a colleague or supervising agent about the issue and write a strong, aggressively worded response back.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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8. Text messages should not be used as a formal means of communication (for example, compliance-related matters).

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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9. The Unsolicited Electronic Messages Act 2007 (UEM Act) establishes clear guidelines around commercial electronic messages (e.g. emails) in response to members of the public being inundated with emails. It is a legal requirement to have an individual's consent prior to sending any commercial electronic messages.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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10. Social media platforms which include reference to real estate agency work are not required to comply with section 121 of the Real Estate Agents Act 2008.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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Sending scanned documents between parties

Sending documents as attachments to an email is commonplace. It is important that licensees take extra care to ensure the email address is accurate, and the correct document is sent to the correct recipient.

It is important to be aware that the readable quality of these documents can degrade if they are repeatedly printed, written on and/or re-scanned when transferring documents between parties involved in a real estate transaction.

When scanning documents, it is important to be careful of:

- Degradation of quality where documents become illegible
- Red pen or highlighter which doesn't scan
- Scanning complete pages – don't cut off any text
- Scanning/copying in black and white in error, when colour scanning is required
- Resolution – can the document be read clearly?

Check all pages are included and in the correct order. Be aware of potential issues around the uncertainty of the document due to illegibility and subsequent enforceability issues.

Of particular concern is when licensees scan the front and back pages only of a sale and purchase/lease agreement. A prudent licensee will ensure ALL pages of a sale and purchase/lease agreement are scanned each time it is required, to ensure all parties are fully informed of any changes made to the agreement throughout the negotiation stage.

settled.govt.nz

REA has developed settled.govt.nz to provide independent and comprehensive guidance for home buyers and sellers.

Licensees, especially those working in the residential sector, should be familiar with settled.govt.nz and actively direct their clients and customers to the website.

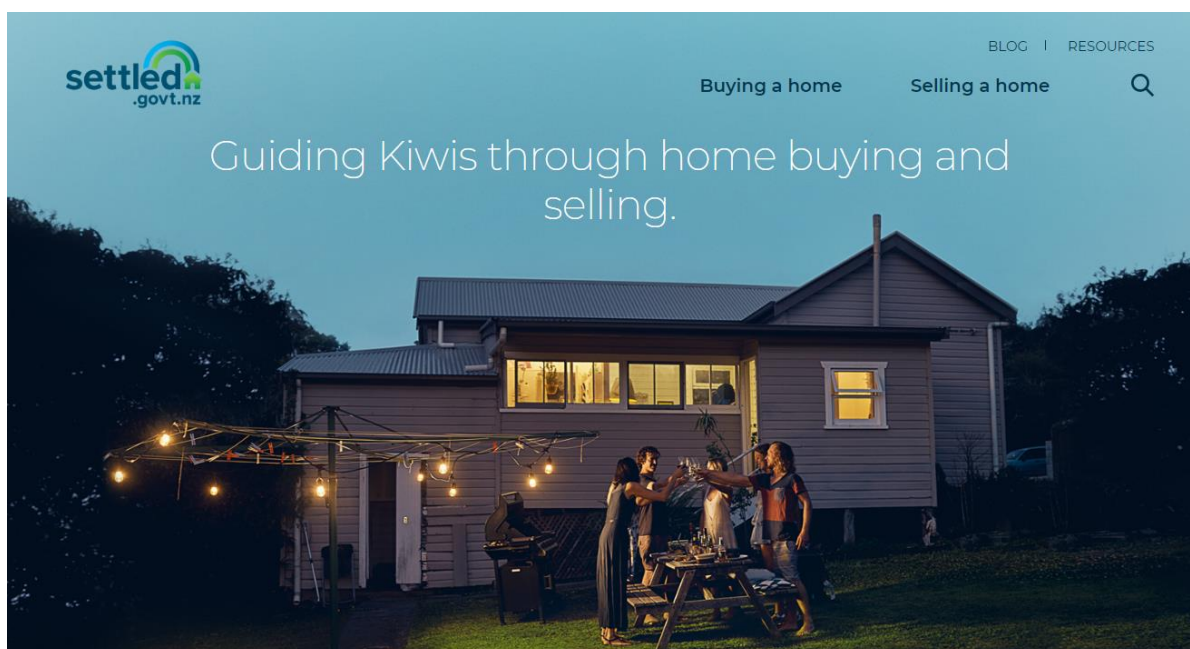
Endorsing independent government guidance sends a message to your clients that you're transparent and want the best for them. It also helps to promote public confidence in the industry - a goal we all share.

Your clients will be better informed – REA's research shows this means they are less likely to have issues, which can lead to complaints. You will benefit from being seen to share relevant, professional, independent information with them.

Information available on the site includes:

- Independent guidance for consumers wanting to buy or sell a home
- Videos, checklists, and helpful tools to help consumers find out what they need to know, what to look out for, what they should be careful of
- The risks associated with property transactions and how they can affect consumers

- Tips to avoid common problems
- Answers to common questions, for example:
 - What is a LIM report?
 - When do I need a lawyer?
 - What is a sale and purchase agreement?



Communication throughout the transaction

A competent licensee must not only demonstrate a good general knowledge of the property, space or business they are selling or offering for sale or lease; they must also comply with the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

The Rules outline standards of **professional competence and conduct** that licensees must meet when communicating with a client, vendor, customer or lessee while carrying out real estate agency work.

These standards include:

- Exercising skill, care, competence, and diligence at all times when carrying out real estate agency work (rule 5.1)
- Having a sound knowledge of the Act, regulations, rules issued by the Real Estate Authority (including these rules), and other legislation relevant to real estate agency work. For example, Anti-money Laundering and Countering Financing of Terrorism Act 2009, Overseas Investment Act 2005 (rule 5.2)
- Complying with their legal and fiduciary obligations (rule 6.1)

- Acting in good faith and deal fairly with all parties (rule 6.2)
- Not engaging in any conduct likely to bring the industry into disrepute (rule 6.3)
- Not misleading a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client (rule 6.4)

The real estate transaction

Before we look closer at communication throughout the transaction, it is helpful to clarify the agreed understanding of 'transaction'. The Real Estate Agents Act 2008 gives the definition of a 'transaction' in section 4:

transaction means any 1 or more of the following:

(a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land:

(b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies):

(c) the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:

(d) the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003:

(e) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).

... the sale, purchase, or other disposal or acquisition of shares comes within the definition of transaction ... if, and only if, the shares entitle the holder to a licence that is registrable under Part 7A of the Land Transfer Act 1952.

Parties to a contract

It is important to remember the following common law principles regarding parties to a contract:

Principle	Brief explanation
Intent	parties to the contract must have intended to enter into a legally binding [enforceable] relationship
Offer and acceptance	one party makes an offer and the other party accepts it
Consideration	both parties give up something of value

Capacity	the parties to the contract must have legal capacity
Legal purpose	the contract must be for a legal purpose because the law will not enforce an illegal act
Genuine consent	the parties enter into the contract under their own free will giving genuine informed consent – they were not tricked or forced into it

Entities that can own or lease a property, space or business

In summary, these are:

- Individual
- Company
- Joint tenancy
- Trust
- Tenancy in common
- Partnership
- Incorporated society



Questions

11. Write the appropriate entities from the list below next to the correct interpretation in the table.

Entity

- Individual
- Company
- Joint tenancy
- Trust
- Tenancy in common
- Partnership
- Incorporated society

Interpretation	Entity
A. Two or more people jointly own a property and their names are recorded on the certificate of title with no mention of separate shares; each tenant has equal rights to possession with rights of survivorship	
B. An independent legal entity treated as a separate 'person' from its directors and shareholders	
C. A relationship between people carrying on a business in common, with a view to profit	
D. Not a legal person in its own right; owned and managed on behalf of beneficiaries through a trust deed	
E. A natural person deemed to have capacity	
F. Two or more people jointly own a property with defined shares, proportioned either equally or disproportionately for each tenant but with no right of survivorship	
G. A group or organisation that has been registered under the Incorporated Societies Act 1908 and, when incorporated, is authorised by law to run its affairs as though it were an individual person	

Communicating with the client throughout the real estate transaction

Many real estate transactions involve relationships with multiple parties representing the client (for example, individuals in a relationship, trustees, directors, executors of the deceased estate).

It is **essential** that a licensee:

- Clearly identifies **ALL** parties involved
- Communicates directly and consistently with **ALL** parties involved

Compliance with rule 9.3 (refer below) requires the licensee to know exactly who the client is, and to ascertain appropriate methods of communication with all client(s) associated with the property, space or business throughout the real estate transaction.

9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client

Note: A Complaints Assessment Committee (CAC) decision (C07683) stated:

"Any licensee when listing a property for sale has an absolute obligation to verify the identity and bona fides of the person who is their client"

Once the identity of the client(s) is known, the licensee should clarify:

- The preferred method of communication with the client(s); e.g. phone, email, face to face, written reports
- The preferred frequency of communication; e.g. daily, weekly, fortnightly
- That communications have been clearly understood
- Where language may be an issue (e.g. English as a foreign language) and take steps to address this

The competent licensee must also ensure that **all oral communication is followed up through written verification to all parties concerned.**

Complaints and documented proof

In most situations where a complaint has been made against a licensee or agency based on "he said/she said" allegations, the case will be dismissed if the licensee or agency can provide documented proof of communication with the complainant (for example, emails, file notes, diary notes).

Without documented verifiable proof from the licensee, many CAC decisions state that "on the balance of probability" they find in favour of the complainant.

In a CAC decision in August 2017 the Committee made the following comment:

[para 3.8] "...In its experience, it is staggering to this Committee how rare it is for a Licensee to follow up and confirm important advice in writing. Prudent practice dictates that any important advice given to a party to a transaction must be followed up/confirmed in writing. If Licensee XXXX had confirmed in writing advice she says she gave the Complainant, it may have assisted her case."

Complaint number: C08183

<http://www.nzlii.org/nz/cases/NZREAA/2017/166.html>

Key point

The licensee's mantra - *"Comply; then Verify!"*

Read the following case study and answer the questions that follow.

Case study 3

A complaint was made to the Real Estate Authority by two directors of a company in relation to the leasing of a property.

The Complainants were approached by a licensee advising them of his interest in listing the property for lease.

The licensee provided the Complainants with a draft agency agreement [partially completed with conditions for commission payable and expiry date of agency].

Changes were made to the agency agreement which was subsequently signed, but no copy of the signed agency agreement was provided to the Complainants.

The licensee then notified his interest in taking a tenancy in the property himself. Specifically, for a letting and property management service for tenants within the property.

The Licensee was aware of the difficulties the Complainants had experienced in letting the Property and, as a consequence, negotiated terms that were very favourable to him as the tenant, which included two months free rental and no liability for payment of operating expenses.

The licensee failed to provide the Complainants with a registered valuation, stating that one of the Complainants "was a "seasoned investor" and to provide a valuation in the circumstances of the Property "... seemed a little ridiculous. Both myself and [Complainant One] know that rental valuations are notoriously inaccurate as comparative leases are not public knowledge".

The complainant alleges that the licensee:

- a. Failed to provide written information regarding commission payable and marketing of the property prior to signing an agency agreement
- b. Failed to provide a copy of the agency agreement after it was signed
- c. Failed to obtain the Complainants' written consent to acquiring a legal interest in the property and failed to provide a valuation in accordance with sections 134 and 135 of the Act
- d. Allowed a conflict of interest to arise and continue because the licensee was both agent for the complainants and a customer negotiating and entering into an agreement to lease with them
- e. Placed the Complainants under undue or unfair pressure to sign the agreement to lease
- f. Submitted an agency agreement that required handwritten amendments and an agreement to lease which did not include all material details
- g. Replaced a clause in the standard Auckland District Law Society (ADLS) agreement to lease and did not have parties initial the change

Complaint number: C09716 / [2017] NZREADT 28

You can read about this complaint and decision in the REA decisions database at rea.govt.nz.



Questions

12. What sections of the Act / Rules, if any, did the licensee breach?

Additional facts to the case study:

- The licensee was a principal – director and majority shareholder of his agency.
- The licensee was found guilty of unsatisfactory conduct, though the Committee stated the breaches were at the high end.

Note the following comments from the Committee (C09716) – Decision on orders:

- [para 3.21] In the way the Licensee went about his work for the Complainants and in his response to the finding of unsatisfactory conduct, the Licensee demonstrates a woeful lack of understanding of the relationship that exists between an agent and a client pursuant to an agency agreement. He demonstrates a lack of understanding of the fiduciary duties owed by an agent to a client and of the fundamental requirement to act in the best interests of the client.
- [para 3.22] Even if the Licensee had complied with section 134 and 135 of the Act such compliance would not have answered the conflict of interest that existed. The conflict of interest could only have been answered in this case by the Licensee ceasing to act as agent. Further, it would be incumbent on the Licensee to make it crystal clear to the Complainants that the agency relationship was terminated, and why.
- [para 3.23] A failure to recognise he was in a conflict of interest situation is the most concerning aspect of this case, but it does not follow that the breaches of the Act and Rules referred to are insignificant.
- [para 3.24] The order he complete unit standard 26152 is designed to assist the Licensee to recognise a conflict of interest in the future.

Note:

The Licensee appealed the penalty decision (fine \$7,000) and order to complete unit standard 26152 (*Explain the principles of ethics applying to real estate practice*) by the CAC – refer [2017] NZREADT 28.

The Tribunal dismissed the appeal.

Managing client price expectations

A competent licensee will ensure that a robust appraisal of the subject property, space or business is completed prior to the agency agreement being signed.

This document will need to be fully explained to the vendor/lessor, including:

- A justification of methodology used – why you took the approach(es) you did and why the approach(es) suited the property, space or business you were appraising
- Why the properties/businesses/leases selected for comparison, and how they related to the subject property
- How the information presented translates into the appraised price arrived at for the property/business lease being appraised (linking statement)

A prudent licensee will ensure that any change in the market or comparable sales that occur during the marketing period will be actively monitored, and if necessary, provide an updated appraisal for the client.

Furthermore, where a licensee becomes aware of any significant material defect of the subject property (e.g. the defect will negatively affect the value) the appraisal should be updated.

In residential transactions, appraisals should be updated at least every 3 months. This timeframe ties in with the 90-day sole agency agreement term for residential property.

In addition, other sectors (e.g. rural, commercial, and business broking etc) may need to update appraisals when the market, economic and /or business environments dictate a change.

Note: rule 10.3 states:

10.3 "Where no directly comparable or semi-comparable sales data exists, a licensee must explain this, in writing, to a client".

In the event of uncertainty where directly or semi-directly comparable sales data is unavailable, licensees should consult with their supervising agent or branch manager.

Communicating with the customer throughout the real estate transaction

Each real estate transaction involves relationships with multiple parties representing the customer (e.g. individuals in a relationship, trustees, directors, executors of the deceased estate).

It is **essential** that a licensee:

- Clearly identifies **ALL** parties involved
- Communicates directly and consistently with **ALL** parties involved

The licensee is required to know exactly who the customer is, and to ascertain appropriate methods of communication with all customer(s) associated with the property, space or business throughout the real estate transaction.

Once the identity of the customer(s) is known, the licensee should clarify:

- The preferred method of communication with the client(s); e.g. phone, email, face to face
- That communications have been clearly understood
- Where language may be an issue (e.g. English as a second language) and take steps to address this

The competent licensee must also ensure that **all oral communication is followed up through written verification.**

Written verification

The biggest challenge for a licensee is to ensure that ALL parties involved in a real estate transaction have been given the **same** information.

6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.

The competent licensee must also ensure that **all oral communication is followed up through written verification to all parties concerned.**



Questions

Read the following statements and decide whether they are 'True' or 'False'

13. A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client (refer Rule 9.3).

<input type="checkbox"/> True	<input type="checkbox"/> False
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14. In a recent CAC decision, the Committee stated:

Any licensee when listing a property for sale has an absolute obligation to verify the identity and bona fides of the person who is their client (Complaint number: C07683).

<input type="checkbox"/> True	<input type="checkbox"/> False
-------------------------------	--------------------------------

15. Clients' price expectations can be effectively managed by a competent licensee through a robust appraisal of the subject property, space or business that is completed prior to the agency agreement being signed.

<input type="checkbox"/> True	<input type="checkbox"/> False
-------------------------------	--------------------------------

16. Each real estate transaction involves relationships with multiple parties representing the vendor/lessor and purchaser/lessee (e.g. individuals in a relationship, trustees, directors, executors of deceased estate).

It is essential that a licensee:

- Clearly identifies ALL parties involved.
- Communicates directly and consistently with ALL parties involved.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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Record Keeping

Licensees are required to keep thorough and accurate records while carrying out real estate agency work.

According to Archives and Records Association of New Zealand:

“Records must be compliant with the NZ regulatory and accountability environment. In effect, most NZ legislation has implications for the keeping of records in the general course of business. Some Acts specify that certain records must be brought into existence and retained for specified periods. Others specify the form or other matters related to the keeping of records.

Where records may need to be produced [for judicial bodies, e.g. complaints assessment committees, courts], they must be captured and maintained in a form that meets the legal requirements of reliable evidence. This is particularly relevant to electronic records and records captured into a document imaging system.”

https://www.aranz.org.nz/Site/resources/general/recordkeeping_legislation.aspx

There are specific statutory requirements for record keeping in relation to real estate.

However, it is prudent to retain copies of ALL relevant documentation electronically which is a cost-efficient option for keeping records over long periods of time.

The **Contract and Commercial Law Act 2017** (which incorporates what was previously the Electronic Transactions Act 2002) sets out the legal requirement as follows:

229 Legal requirement to retain document or information that is in paper or other non-electronic form

(1) A legal requirement to retain information that is in paper or any other non-electronic form is met by retaining an electronic form of the information if—

- (a) the electronic form provides a reliable means of assuring that the integrity of the information is maintained; and
- (b) the information is readily accessible so as to be usable for subsequent reference.

(2) Subsection (1) applies to information that is a public record within the meaning of the Public Records Act 2005 only if the Chief Archivist has approved the retention of that information in electronic form.

(3) To avoid doubt, if information is retained in electronic form in accordance with subsection (1), the paper or other non-electronic form of that information need not be retained.

Statutory requirements

Sale and purchase/lease agreements

Rules 10.10, 10.11 and 10.12 cover 'contractual documentation and record keeping' in relation to written sale and purchase or lease agreements, as follows:

Rule 10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

Rule 10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

Rule 10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

Trust accounts

Under section 6 of the Real Estate Agents (Audit) Regulations 2009 every agency must keep up to date and accurate records of all trust monies relating to a client and records must be maintained for a period of at least 7 years from the date of the last transaction.

Property files

The agency is required to retain copies of property files established when carrying out real estate agency work. This may be done through means of electronic copies (for example, stored in the Cloud). Documentation includes:

- Marketing and advertising material – with vendors' signature/s and vendor financial contributions
- Appraisals
- Compliance correspondence, for example, emails
- Transaction reports

- Written verification of disclosure issues
 - For example, residential REA approved guides acknowledgement, defects etc
- Multi offer acknowledgement forms
- Auction related documents
 - For example, reserve sets, bidding registers

Powers of a Complaints Assessment Committee

It is essential that relevant documentation is kept safe and secure so that you can respond to any complaint and associated REA investigation requirements if needed. Committees can request for papers, documents, records or things, as set out in section 85 of the Real Estate Agents Act 2008:

85 Powers to call for information or documents

(1) If the conditions stated in subsection (2) are satisfied, a Committee may, by notice in writing, require any person to produce to the Committee any papers, documents, records, or things.

(2) The conditions referred to in subsection (1) are that—

(a) the members of the Committee believe, on reasonable grounds, that the exercise of the powers conferred by that subsection is necessary to enable the Committee to carry out its inquiry; and

(b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to produce to the Committee, within a reasonable time, the papers, documents, records, or things required by the notice; and

(c) the members of the Committee believe, on reasonable grounds, that—

(i) it is not reasonably practicable to obtain the information required by the Committee from another source; or

(ii) for the purposes of the investigation, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source.



Questions

Read the following statements and decide whether they are 'True' or 'False'

17. Where records may need to be produced for judicial bodies, they must be captured and maintained in a form that meets the legal requirements of reliable evidence.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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18. An agent must retain, for a period of 24 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction (refer Rule 10.12).

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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19. Section 85 of the Real Estate Agents Act 2008 grants Complaints Assessment Committees powers to call for papers, documents, records or things.

<input type="checkbox"/>	True	<input type="checkbox"/>	False
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