

BUSINESS AGENTS - RULES OF CONDUCT

Rules 1 - 9

1. Knowledge of Act and Regulations

An agent must have a knowledge and understanding of the Act and the regulations under the Act and other relevant laws, (including laws relating to tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the agent to exercise his or her functions as agent lawfully.

2. Fiduciary obligations

An agent must comply with the fiduciary obligations arising as an agent.

3. Honesty, fairness and professionalism

An agent must act honestly, fairly and professionally with all parties in a transaction.

An agent must not mislead or deceive any parties in negotiations or a transaction.

4. Skill, care and diligence

An agent must exercise reasonable skill, care and diligence.

5. High pressure tactics, harassment or unconscionable conduct

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

6. To act in client's best interests

An agent must act in the client's best interest at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

7. Confidentiality

An agent must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, unless:

- (a) the client or customer authorises disclosure, or**
- (b) the agent is permitted or compelled by law to disclose.**

8. To act in accordance with client authority

An agent must not act as an agent or represent himself or herself as acting as an agent on behalf of a person without written authority.

9. To act in accordance with client's instructions

An agent must act in accordance with a client's instructions unless it would be contrary to this Act or regulations under the Act, or otherwise unlawful to do so.

RULES 10 - 13

10. Licensee must ensure employees comply with the Act and regulations

An agent who is the licensee-in-charge at a place of business must take reasonable steps to ensure other licensees or registered persons employed in the business conducted there comply with the Act and regulations under the Act.

11. Conflicts of interest

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.

12. Referral to service provider

An agent who refers a principal or prospect to a service provider must not falsely represent to the principal or prospect that the service provider is independent of the agent.

A service provider is considered to be 'independent' of an agent if:

- (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and**
- (b) the agent does not have a personal or commercial relationship with the service provider.**

The following are examples of a personal or commercial relationship:

- (a) a family relationship,**
- (b) a business relationship,**
- (c) a fiduciary relationship,**
- (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.**

If the service provider is not independent of the agent, the agent must disclose to the principal or prospect:

- (a) the nature of any relationship, whether personal or commercial, the agent has with the service provider, and**
- (b) the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client or customer to the service provider.**

13. Licensee not to recommend engagement of services of solicitor or licensed conveyancer acting for other party

An agent must not recommend that a principal or prospect engage the services of a solicitor or licensed conveyancer, or firm of solicitors or licensed conveyancers, if the agent knows that the solicitor or licensed conveyancer, or the firm of solicitors or licensed conveyancers, acts or will be acting for the other party to the agreement concerned.

Sub-clause (1) does not prevent an agent recommending that a principal or prospect engage the services of a solicitor or licensed conveyancer if no other solicitor or licensed conveyancer is available (for example, in a remote location).

If no other solicitor or licensed conveyancer is available, the agent must, in recommending their engagement, advise the principal or prospect that the solicitor or licensed conveyance is or will be acting for the other party.

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RULES 14 - 20

14. Inducements

An agent must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce a third person to engage the services of the agent as agent in respect of any matter.

15. Soliciting through false or misleading advertisements or communications

An agent must not solicit clients or customers through advertisements or other communications that the agent knows or should know are false or misleading.

16. Insertion of material particulars in documents

An agent must not submit or tender to any person for signature a document, or cause or permit any document to be submitted or tendered to any person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

17. Duty to provide copy of signed documents

An agent who submits or tenders a document to any person for signature, or who causes or permits a document to be submitted or tendered to any person for signature, must immediately after the person has signed the document give a copy of the document to the person.

18. Representations about the Act or regulations

An agent must not falsely represent to a person the nature or effect of a provision of the Act or any regulation under the Act.

An agent must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agency agreement or any term of such an agreement is required by the Act or a regulation under the Act.

19. Agency agreements must comply with regulations

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of the Property, Stock and Business Agents Regulation 2003, as required by section 55 of the Act.

20. Preliminary physical inspection of the business to be conducted by agent

An agent must not act on behalf of a principal in respect of the sale of a business unless the agent has conducted a preliminary physical inspection of the business or has the principal's written instructions that such an inspection is not required by the principal.

RULES 21 - 22

21. Sales inspection report required for business

On completion of the physical inspection of the business, an agent must prepare and give to the principal a sales inspection report for the business. The report must specify the following and be signed by the agent:

- (a) the principal's name and address,**
- (b) the date of preparation of the report,**
- (c) the agent's name, business address and telephone number,**
- (d) a description of the business, including the address of the business and such other details as may be necessary to enable the business to be readily identified, the business name and its ABN,**
- (e) a description of inclusions to be included in the sale such as goodwill, plant, fittings and stock in inventory, together with details of any encumbrances affecting those inclusions,**
- (f) any terms and conditions of sale known to the agent,**
- (g) the agent's recommendation as to the most suitable method of sale of the business,**
- (h) the agent's estimate of the selling price (or price range) for the business,**
- (i) details of any defects, local government notices or orders affecting the business that are known to the agent.**

22. Confirmation of specific instructions

Before or at the time of entering into an agency agreement under which the agent will act for the seller on the sale of a business, the agent must prepare for inclusion in the agency agreement written confirmation of any specific instructions given to the agent by the principal before the agreement is entered into about any of the following:

- (a) arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale,**
- (b) the marketing of the business,**
- (c) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which such an inspection can be made,**
- (d) the entitlement of prospective purchasers to inspect records, books of account and other documents concerning the business and the circumstances under which such an inspection can be made.**

The written confirmation may be prepared and be included as part of the agency agreement.

RULES 23 - 26

23. Principal to be informed of offer

The agent must, unless the principal has instructed to the contrary in writing, inform the principal of all offers of purchase as soon as practicable after receiving the offer up until exchange of contracts has taken place.

If the agent is not going to inform the principal of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the principal.

The agent may inform the principal of an offer orally or in writing and must identify the party by whom the offer is made. If the principal is informed orally, the agent must confirm the information in writing.

This clause does not apply to bids made in the course of an auction.

24. Setting aside minimum or reserve price at auction

When the bidding at an auction does not reach the minimum or reserve price fixed for the property by the principal, the licensee conducting the auction must not set aside that price without the express permission of the principal or a person authorised to give that permission by the principal.

25. Information to be given when expression of interest deposit paid

When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the principal has no obligation to

sell the business or the purchaser to buy the business and the deposit is refundable if a contract for the sale of the business is not entered into. The information must be provided in writing and may be provided on the receipt.

The agent must promptly inform the principal when an expression of interest deposit has been paid.

The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offer to purchase the business received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

26. Agent must not accept payment for a referral

An agent must not demand or accept a fee or other valuable consideration for referring the principal to a buyers agent.